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**Before the United States Copyright Royalty Judges  
Docket No. 16-CRB-001-SR/PSSR  
(2018-2022)**

**In the Matter of: Determination of Royalty Rates and  
Terms for Transmission of Sound Recordings by Satellite Radio and  
“Preexisting” Subscription Services (SDARS III)**

Received

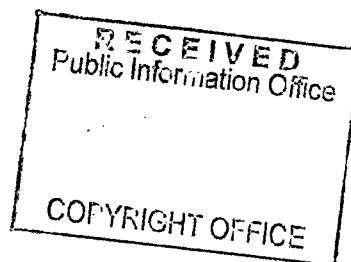
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Copyright Royalty Board

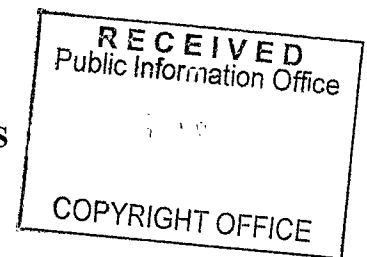
**Services’ Reply In Support of  
Their Motion to Set Specific Discovery  
Deadlines and Compel Sound Exchange**

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Before the ~~Received~~  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C. 3 2016  
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In the Matter of:

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and "Preexisting"  
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Docket No. 16-CRB-001-SR/PSSR  
(2018-2022)

**REPLY IN SUPPORT OF SERVICES' MOTION TO SET SPECIFIC DISCOVERY  
DEADLINES AND COMPEL THE COPYRIGHT OWNER  
PARTICIPANTS' ADHERENCE TO THEIR DISCOVERY OBLIGATIONS**

Sirius XM Radio Inc. ("Sirius XM") and Music Choice (together, the "Services") write in reply to the Opposition of SoundExchange, RIAA, Sony Music Entertainment, Universal Music Group, Warner Music Group, A2IM, AFM, and SAG-AFTRA (collectively, the "Copyright Owner Participants") to the Services' Motion to Set Specific Deadlines and Compel the Copyright Owner Participants' Adherence to Their Discovery Obligations.

The essence of the Copyright Owner Participants' Opposition is their claim that they are engaged in a "good faith effort" to comply with the Services' document requests, such that they have begun to produce documents and are "actively engaged" in reviewing and producing documents on a "rolling basis." Opp. at 2, 4, 5. Given this effort, argue the Copyright Owner Participants, the Services' Motion is not only moot, but a waste of everyone's time. Worse, to the extent the Copyright Owner Participants have not yet produced any documents beyond the limited set of agreements voluntarily exchanged (save for a very small production received just hours before this filing), it is not their fault, they say, but actually the *Services'* fault for serving requests that the Copyright Owner Participants deem too broad and burdensome, and then failing

to narrow or prioritize those requests, even in advance of receiving objections and responses to those requests from the majority of the Copyright Owner Participants. If only the Services would negotiate and cooperate with the Copyright Owner Participants, the Opposition suggests, the requested documents will be produced promptly.

While this might, on its face, sound reasonable as presented by the Copyright Owner Participants in their brief, it is simply not true. At the time the Services filed their brief, they had received only two out of eight sets of responses and objections, and those (from SoundExchange and RIAA) largely deflected responsibility for most requests to the record company participants, who had yet to respond or even say when they would do so. The only documents received at that point were agreements produced *not* in response to the Services' document requests—as the Opposition falsely states—but pursuant to a voluntary exchange that the participants began negotiating many weeks in advance of the Services' formal discovery requests. Moreover, counsel for the Copyright Owner Participants was unable—over multiple phone calls across multiple months—to say whether or when the Copyright Owner Participants would produce a single document other than the agreed-upon license agreements, offering only vague blandishments to the effect that they were “working on it.” That utter lack of specificity was paired with the repeated representation, now explicitly presented in the Opposition, that the Judges were without authority to order any pre-written-direct-statement discovery at all.

Even now, while the remainder of Copyright Owner Participants have finally served their responses and objections (notably only *after* the Motion was filed seeking to compel them to do so), the Services *still* have no idea when, if at all, *any* additional documents responsive to their requests will be produced, particularly given that the Copyright Owner Participants have claimed that they have no duty to produce any if they choose not to do so.

This posture is untenable. The Services have sought data and information critical to the preparation of their direct cases; indeed, guided by their experience in these cases, the Judges ordered the Preliminary Discovery Period precisely to provide all participants with information to help shape their cases and streamline the identification of key issues prior to written direct testimony. Yet more than two weeks after the voluntary exchange of agreements—and more than six weeks after the Services’ delivery of their formal document requests—the Copyright Owner Participants (i) continue to withhold license agreements with Spotify, in blatant disregard of the Judges’ Protective Order; (ii) refuse to produce documents from labels other than the major record companies; and (iii) have yet to provide other requested documents including, among other things, usage and payment information for music service licensees (which would allow the Services to understand effective rates paid by such services) or record company financials (crucial to an 801(b) proceeding). These are foundational documents that have been produced as a matter of course and without controversy in other proceedings, within the same 30-day timeframe specified in the Services’ document requests.

Far from being “premature” or a “waste of time,” then, the Services’ Motion is absolutely necessary to force the Copyright Owner Participants to comply with their discovery obligations and produce additional documents that will allow the Services to prepare their written direct statements. Absent a clear order that the Copyright Owner Participants must produce documents in response to the Services’ requests, and begin to do so immediately, the Services have no assurance as to when they will *ever* receive any of the documents they have requested, and assuredly will continue to be stonewalled by the Copyright Owner Participants with promises (as in the Opposition) that they are “working on it” and “actively engaged”—but no details as to what that “work” or “engagement” will ultimately yield, or when.

## ARGUMENT

### **I. AN ORDER FROM THE JUDGES IS NEEDED TO ENSURE THIS MATTER PROCEEDS IN A TIMELY AND FAIR MANNER**

Contrary to their claims in the Opposition, the Copyright Owner Participants have only produced a limited set of agreements as part of a separate, voluntary exchange of license agreements negotiated far in advance of the Services' formal document requests,<sup>1</sup> as well as a small production (solely from SoundExchange, AFM, and SAG-AFTRA) produced just hours in advance of this Reply. As noted above, as of the filing of this Reply, the Services have no idea when, if ever, they will receive any additional documents, including those from the record company participants that are crucial to the presentation of their cases.

Absent a full production from all the Copyright Owner Participants, the Services are at a distinct informational disadvantage. *See* Motion at § II. For example, the Services have yet to receive basic payment, usage, and revenue information related to the Copyright Owner Participants' license agreements. This information is absolutely essential for the Services to calculate effective rates actually paid by licensees pursuant to the various service agreements that have been produced.<sup>2</sup> Where agreements contain rate formulas with multiple prongs, for example, such information is essential to determining which prong of the rate formula the services actually paid under. Given the importance of this information, and the significant

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<sup>1</sup> *See, e.g.*, Larson Decl. ¶ 22; Opp. at 8 (stating the Copyright Owner Participants "have already voluntarily produced a large volume of information") (emphasis added); *id.* at 12-13 ("[T]he discovery requested is not allowed for by the Copyright Act or the Judges' regulations").

<sup>2</sup> The Copyright Owner Participants themselves have sought the exact same revenue and payment information from the Services in their document requests. *See, e.g.*, Larson Reply Decl. Ex. A (SoundExchange Requests for Production directed to Sirius XM) Requests No. 6 (documents sufficient to show total plays), No. 7 (information sufficient to show the number of times recordings were played on a monthly basis), No. 10 (all documents constituting reports provided to the licensor).

amount of royalties at stake in this proceeding over the next rate period, there is no question that the probative value of the requested documents vastly outweighs any burden involved in producing them. *See* Discovery Order 1, *In re Determination of Royalty Rates and Terms for Ephemeral Recording and Webcasting Digital Performance of Sound Recordings* (“Web IV”), Docket No. 14-CRB-0001-WR (2016-2020) (Jan. 15, 2015) at 3, 7 (holding that any claim of burden must be weighed against the significant royalties at stake in the proceeding, and noting that SoundExchange may mitigate that burden by spreading it among its thousands of members). Notably, these documents have been produced and relied upon by experts on both sides in every prior proceeding, and the Copyright Owner Participants no doubt have provided (or will provide) a subset of this same information to their experts here. The Services are also still awaiting financial information for certain individual record companies, which is fundamental to an 801(b) proceeding. Even for the categories of documents that the Copyright Owner Participants have claimed that they will provide, they have not told the Services when they will produce those additional categories of documents—and have only made vague claims that they are speaking to their clients and gathering and reviewing certain (unspecified) documents.

The Copyright Owner Participant’s attempt to blame the *Services* for their refusal to produce any documents responsive to the Services’ requests is particularly egregious. *See* Opp. at 7-9. To start, the Services have never contended that the Copyright Owner Participants needed to produce all of the requested documents immediately and without objection. The Services have simply requested that the Copyright Owner Participants at least recognize their discovery obligations, begin producing responsive documents, and adhere to a reasonable schedule for doing so.

The Copyright Owner Participants also fault the Services for failing to narrow or prioritize their requests, and suggest such negotiations are all that stand between the Services and their desired documents. This conveniently overlooks the fact that six of the eight Copyright Owner Participants did not serve their responses and objections until *after* the Services filed the Motion. It would defy all logic for the Services to propose means of narrowing their requests before the Copyright Owner Participants even propounded their purported objections, or otherwise indicated which documents they were or were not willing to provide. In any event, it is not the Services' responsibility to spell out for the Copyright Owner Participants the order in which they should produce their documents.<sup>3</sup> And regardless of their positions regarding the scope, burden, and breadth of the Services' discovery, such objections do not excuse the Copyright Owner Participants from producing *anything at all* on the basis that their conception of how the discovery process should proceed has not been adopted. With the Preliminary Discovery Period now more than half-way over already, firm commitments and deadlines, and actual meaningful document production, are necessary.

Additionally, as the Opposition admits, even the Copyright Owner Participants' "voluntary" production was incomplete on two significant fronts, as they are improperly withholding (i) agreements entered into by independent labels (the "Independent Label Agreements"); and (ii) agreements between any record label and Spotify (the "Spotify Agreements"). We address the first of these deficiencies in Section II below. As to the latter,

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<sup>3</sup> The Copyright Owner Participants' suggestion that they requested that the Services narrow their requests and the Services refused, *see* Opp. at 6 & n.4, is highly misleading. SoundExchange actually asked the Services to narrow *one* request—the request for documents produced by SoundExchange in the *Web IV* proceeding—by providing the Copyright Owner Participants with a list of Bates numbers sought. The Services will do so, but that obviously does not excuse SoundExchange from responding to the remainder of the requests.

the Copyright Owner Participants purport to excuse their failure to provide the Spotify Agreements because they have “informed Spotify of the Services’ request” and are “giving Spotify a reasonable opportunity to assess its options.” Opp. at 7. But that is, quite simply, *not* what the Protective Order provides. The Protective Order unequivocally states “[p]articipants *are hereby ordered not to withhold from production* responsive, non-privileged, discoverable documents on the grounds that they are subject to confidentiality provisions in private agreements with third parties.”<sup>4</sup> Protective Order at § 5.

The deadline for submitting written direct proposals is fast approaching. Without intervention from the Judges, the Copyright Owner Participants will have successfully impeded the Services in presenting their cases based on a full range of available information. (Already, the Services served preliminary disclosures and a preliminary rate proposal without benefit of the documents it has sought.) Meanwhile, SoundExchange, by virtue of its position as the representative of all its record label members, has access to the complete universe of potentially relevant information.<sup>5</sup> Direction from the Judges is needed now to rectify this inequitable imbalance.

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<sup>4</sup> To be clear, Sirius XM has not itself withheld agreements in the same fashion as the Copyright Owner Participants, as alleged. When the parties agreed in May to exchange certain license agreements, counsel for Sirius XM gathered all the companies’ direct licenses executed to date and prepared them for production. As the deadline for the exchange slipped into July, however, Sirius XM continued to execute additional licenses. It is only those new licenses—executed in the past several weeks and provided to counsel for Sirius XM on July 20—that Sirius XM produced in a supplemental production three days after producing the first batch of licenses. Larson Reply Decl. ¶¶ 4-5.

<sup>5</sup> For this reason, the Opposition’s focus on the number of license agreements produced by each of the parties is meaningless. See Opp. at 4-5. As the licensor parties to thousands of agreements with 130 digital music services, *id.* at 4 n.2, the Copyright Owner Participants obviously have more agreements to produce than do the individual Services. Moreover, providing these easily accessible agreements is not the end of the discovery process, but only the first step; it does not excuse the Copyright Owner Participants from additional discovery demands, including royalty information and other documents necessary for the Services to understand the economics underlying the license agreements.

## II. THE TRADE ASSOCIATION PARTICIPANTS SHOULD PRODUCE DOCUMENTS FROM THEIR BOARD MEMBERS

SoundExchange, RIAA, and A2IM (collectively, the “Trade Association Participants”) have flatly refused to produce any documents from the record companies whose representatives sit on the Trade Association Participants’ boards of directors—documents that SoundExchange<sup>6</sup> collected and produced in prior CRB proceedings, including by order of the Judges over SoundExchange’s objections. Although, unlike in prior proceedings, the three major record companies are direct participants in this proceeding and are therefore directly subject to discovery, not a single one of the many independent record companies is directly participating. Consequently, if the Trade Association Participants’ position is adopted by the Judges, the Services will be unable to obtain preliminary discovery from any of the independent record companies.

The Services must be allowed access to documents from the independent record labels. As a preliminary matter, the Copyright Owner Participants’ argument that the Judges should not even consider the Services’ Motion on this point due to an alleged failure to meet and confer must be rejected. In fact, the Services discussed with the Trade Association Participants their need for documents from independent labels prior to the beginning of the discovery period, while the participants negotiated the early, voluntary production of various documents. *See* Larson Decl. ¶¶ 3-10. During those protracted negotiations, the Services requested documents from a number of independent record companies—making that position expressly clear in e-mail correspondence—but the Trade Association Participants would not entertain any compromise. *Larson Decl. Ex. A at 1* (May 10, 2016 e-mail from T. Larson to J. Freedman et al.), *Ex. B at 2*

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<sup>6</sup> SoundExchange is the only one of the Trade Association Participants that has ever participated in a prior Section 114 proceeding before the Copyright Royalty Board.

(May 26, 2016 e-mail from T. Larson to J. Freedman *et al.*); *see also* Larson Reply Decl. ¶ 2.

Having already been refused production from independent record companies, the Services were not required to engage in a redundant and futile supplemental meet and confer process after the formal objections were served.

Moreover, as the Judges have previously ruled, participants in these proceedings must present “a ‘thick’ market of agreements” to aid the Judges in setting appropriate rates. Order Granting in Part Licensee Services’ Motion for Expedited Issuance of Subpoenas to Apple, Inc. (Apr. 10, 2015) at 5-6, *Web IV*, No. 14-CRB-0001-WR (2016-2020) (“*Web IV* Order re Expedited Subpoenas”). The Services will be left without insight into that “thick market” if the record companies on whose behalf and at whose direction the Trade Association Participants are acting in this proceeding are permitted to avoid discovery simply because the relevant documents are not already in the Trade Association Participants’ own corporate files. In addition to these preliminary considerations, at least four others support the Motion.

*First*, SoundExchange—the only Trade Association Participant that has previously participated in a Section 114 proceeding before the Judges—has in a prior proceeding produced documents from the files of record companies that had not directly participated in the proceeding or provided a witness. In their Motion, the Services provided one example of the Judges ordering SoundExchange to produce certain agreements between “a Digital Music Service” and “a Record Company,” including all four (at the time) major record companies. *See* Mot. at 7 & n.5 (citing Mar. 13, 2012 Order Granting in Part & Denying in Part Services’ Motion to Compel SoundExchange to Provide Digital Music Agreements, *In re Determination of Rates and Terms for Preexisting Subscription Services & Satellite Digital Audio Radio Services (“SDARS II”)*, No. 2011-1 CRB PSS/Satellite II). Notably, at the time that Order was issued, neither Sony nor

EMI had provided witnesses in the proceeding. Nonetheless, the Order required SoundExchange to produce agreements between digital music services and all four of the major record companies and various independent labels, irrespective of whether those member companies were themselves direct participants or had provided a witness or evidence in the proceeding.<sup>7</sup>

*Second*, limiting discovery only to documents from record companies that are direct participants in these proceedings or that have already produced a witness or evidence would reinforce the information asymmetry between the Services and the Copyright Owner Participants and undermine the very purpose of the Preliminary Discovery Period. If the Judges were to adopt the Trade Association Participants' position, the Preliminary Discovery Period would necessarily be limited only to documents in the corporate files of direct participants, because it could not yet be known which non-participant record companies would provide witnesses or evidence. What is more, even in later discovery periods the Trade Association Participants could cherry-pick what information is available to the Services and, by extension, the Judges, by choosing and coordinating which record companies would be participants or provide witnesses or evidence during the other phases. Because the Trade Association Participants have access to nearly all the relevant information relating to license agreements, usage data, and royalty payments, they could stack the deck with market data favorable to them while keeping information favorable to the Services under wraps.

*Third*, even as to *participating* record companies, the Trade Association Participants

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<sup>7</sup> The Copyright Owner Participants seek to distinguish that ruling by pointing out that the Services' underlying brief stated that "[e]ach of the Record Companies ha[d] provided a witness and/or evidence in this proceeding." Opp. at 11. The fact that the Services, in that proceeding, described their requests in this fashion is immaterial. The Judges did not include that limitation in their Order, did not condition the Order on a record company having provided a witness or evidence in the proceeding, and, as noted, required production from record companies who did *not* supply witnesses.

refuse to produce any documents unless and until after the Services first attempt, and are unable, to obtain them directly from the companies. Once again, the Trade Association Participants' position is inconsistent with a prior order of the Judges, in which the Judges "refus[ed] to allow SoundExchange and Apple to play 'Alphonse and Gaston'"—*i.e.*, to "refuse[] to act until another party acts first"—with respect to discovery. *Web IV* Order re Expedited Subpoenas at 8 & n.11. As before, the Judges should prevent the Copyright Owner Participants from delaying or avoiding production of important, relevant documents by pointing fingers at one another.<sup>8</sup>

*Finally*, the Copyright Owner Participants offer a meaningless distinction in claiming that only "individual executives" sit on the trade associations' boards, with no recognition of their record company employers. The directors of the trade associations do not hold those positions in their personal capacities; they are there on behalf of the record companies that employ them.<sup>9</sup> By having executives on the boards of the participating trade associations, those record companies are closer to this proceeding than the other members and are, accordingly, able to exercise more control over the proceeding. For that reason, the companies represented on the Trade Association Participants' boards are particularly appropriate targets for discovery. Record companies should not be permitted to use their trade associations as both a sword for seeking

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<sup>8</sup> The Services are not suggesting that the Copyright Owner Participants should be required to produce duplicative documents, but especially given that they are all represented by the same counsel they should promptly coordinate to produce the documents rather than seek to delay production in this manner.

<sup>9</sup> The Copyright Owner Participants cite Delaware case law for the proposition that a director's duty of loyalty requires her to act in the best interests of the corporation and its stockholders in the event the director's interests diverge from the stockholders', but do not even attempt to explain why any such divergence of interests would be present here. *See* Opp. at 11. Unlike the businesses analyzed in the cited cases, a trade association's sole purpose is to represent the interests of its industry members, including its board members.

higher rates in these proceedings and a shield against relevant discovery.<sup>10</sup>

### III. THE JUDGES PLAINLY HAD THE AUTHORITY TO ORDER A PRELIMINARY DISCOVERY PERIOD

In an attempt to justify their discovery non-compliance, the Copyright Owner Participants attack the Judges' very authority to order discovery prior to the submission of written direct cases. *See* Opp. at 12-15. This argument fails on multiple grounds.

As an initial matter, this argument comes far too late, and has been waived. If the Copyright Owner Participants truly had an issue with the ability of the Judges to issue discovery at all, they could and should have taken up that issue directly with the Judges in March—not more than halfway through the Preliminary Discovery Period in response to a Motion to Compel. Indeed, had the Services not moved to compel, the Copyright Owner Participants likely would have simply ignored the March 14 Scheduling Order, and run out the clock on the Preliminary Discovery Period. Moreover, the Copyright Owner Participants waived any argument that the Preliminary Discovery Period was improper by serving, pursuant to the March 14 Scheduling Order, numerous requests for production almost identical in scope and quantity to those served by the Services, and doing so without making any reservation of rights or suggesting that the Services' compliance would only be voluntary.<sup>11</sup> *See* Larson Reply Decl. ¶ 3 & Exs. A-B.

The Opposition's attempt to cabin the Judges' authority also misreads Section 801 of the Copyright Act, which provides the Judges with authority to make "*any* necessary procedural or

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<sup>10</sup> The Copyright Owner Participants claim that "neither counsel nor the participants themselves . . . have access to the files of the non-participant record companies from whom the Services seek production, and no means to compel production from such companies." Opp. at 12. This claim is belied by the fact that SoundExchange has produced such documents (in some instances involuntarily, pursuant to the Judges' orders) in prior proceedings, as noted above.

<sup>11</sup> Notably, one of the Copyright Owner Participants in this proceeding—Sony—has not challenged the authority of the Judges to order preliminary discovery in the Section 115 proceeding, where it is a licensor and not a licensee. Its position here should be no different.

evidentiary ruling[] in any proceeding . . . .” *See* 17 U.S.C. § 801(c) (emphasis added). The Opposition’s failure to squarely address this provision—which it relegates to a single, conclusory footnote (*see* Opp. at 15 n.10)—speaks volumes, given that it was pursuant to this very provision that the Judges ordered the Preliminary Discovery Period to proceed. The Copyright Owner Participants instead focus myopically on Section 803, which describes a different discovery period contemplated in connection with the parties’ written cases. Nowhere, though, does Section 803 state that it provides the sole means by which the Judges can order discovery.

Section 801 plainly provides the Judges with broad, additional flexibility—as part of their oversight of these proceedings—to make “*any* necessary procedural . . . ruling.” 17 U.S.C. § 801(c) (emphasis added). “Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster’s Third New Int’l Dictionary 97 (1976)). In light of this express, unqualified language, there can be no argument that Section 801 excludes the authority to make procedural rulings with respect to additional discovery if that discovery is deemed necessary by the Judges. The Judges are also granted subpoena power by Section 803(b)(6)(C)(ix), and that discovery power is not limited to documents “directly related” to any participant’s written case. If the Judges have broad discretion to issue subpoenas at any time for the documents they deem necessary, *a fortiori* they are empowered to authorize discovery between the participants themselves without similar limitations.

The Opposition resorts, in a footnote, to the non-sequitur that “Section 801(c) cannot reasonably be read to compel discovery that is contrary to express statutory provisions.” *See* Opp. at 15 n.10. This is true, but irrelevant: there is no provision of the Copyright Act that expressly prohibits a preliminary discovery period, and for good reason. The Judges issued the

March 14 Scheduling Order based on their “experience” in presiding over such matters. *See* March 14 Scheduling Order at 2. As the Judges recognized, allowing substantive, fulsome discovery to proceed before the filing of written direct statements will “streamline the process of participants’ identification of issues,” and in turn help inform the parties’ written direct cases. *Id.* The Copyright Owner Participants complain that the Judges’ order “add[s] to the discovery burdens of the proceeding.” Opp. at 14. On the contrary, the Judges recognized that the Preliminary Discovery Period—if respected by all participants—would reduce the discovery burdens on the participants in later periods as the scope of discovery narrows. *See* March 14 Scheduling Order at 2-3.

In short, the Judges acted well within the statutory framework in ordering preliminary discovery as a “procedural ruling” they deemed necessary in their experience. Indeed, judges make these types of scheduling and procedural rulings all the time pursuant to their inherent authority to manage their dockets. *Cf.* Fed. R. Civ. P. 1, 16, 26; *see also Millicom Int’l Cellular v. Republic of Costa Rica*, No. 96-cv-0315, 1997 WL 527340, at \*4 (D.D.C. Aug. 18, 1997) (collecting authorities for the proposition that plaintiffs facing a motion to dismiss based on the Foreign Sovereign Immunities Act (“FSIA”) have a right to preliminary discovery where necessary to determine whether an FSIA exception applies); *Pearson v. First NH Mortg. Corp.*, 200 F.3d 30, 35 (1st Cir. 1999) (holding that trial courts have discretion to permit preliminary discovery and evidentiary proceedings once a “colorable” claim of fraud is raised). Nor does the March 14 Scheduling Order open the floodgates to “broad-ranging discovery that is unmoored from case filings,” as the Opposition charges. Certainly, the March 14 Scheduling Order did not curtail the rights of any participant to object to discovery as irrelevant, overbroad or unduly burdensome.

## CONCLUSION

For the foregoing reasons and those set forth in the Motion, the Services respectfully request that the Judges grant the Motion and issue an Order requiring the Copyright Owner Participants (i) to begin producing responsive documents within three days of such order; (ii) to produce all license agreements with Spotify and any other service that are currently being withheld; and (iii) to complete their production before the August 22, 2016 close of the Preliminary Disclosure and Discovery Period. With respect to SoundExchange, RIAA, and A2IM who are participating on behalf of their member record companies, the Services also seek an order compelling those entities to produce responsive documents from the record companies who sit on their respective boards of directors.

Dated: August 3, 2016  
New York, NY

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Declaration of Todd  
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Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

In the Matter of:

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and “Preexisting”  
Subscription Services (SDARS III)

Docket No. 16-CRB-001-SR/PSSR  
(2018-2022)

**DECLARATION OF TODD LARSON**  
**(On behalf of Sirius XM Radio Inc.)**

1. I am counsel for Sirius XM Radio Inc. (“Sirius XM”) in the above-captioned case.

I am familiar with the facts, circumstances, and proceedings in this case and submit this declaration in support of the Reply in Support of Services’ Motion to Set Specific Discovery Deadlines and Compel the Copyright Owner Participants’ Adherence to their Discovery Obligations (the “Reply”).

2. Prior to the beginning of the discovery period, when the participants began negotiations regarding the voluntary exchange of various documents, the Services discussed with SoundExchange, RIAA, and A2IM (collectively, the “Trade Association Participants”) their requests for documents from independent labels as well as the majors. *See* Ex. A to my Declaration dated July 21, 2016 (the “Larson Declaration”). During those protracted negotiations, the Services specifically requested documents from independent record companies represented on the boards of directors of the Trade Associations. *See, e.g.*, Ex. B to the Larson Declaration. Counsel for the Trade Association Participants made clear they would only produce agreements from the major labels and not from any independents.

3. On June 21, 2016, when SoundExchange served extensive document requests on the Services, it did not reserve any argument that the Preliminary Discovery Period was improper. Attached hereto as Exhibits A-B are true and correct copies of SoundExchange's requests for the production of documents directed to each of Sirius XM and Music Choice, respectively.

4. When the parties agreed in May of 2016 to exchange certain license agreements, counsel for Sirius XM gathered all of Sirius XM's direct licenses executed to date and prepared them for production. On July 19, 2016, Sirius XM's counsel produced those direct license agreements to the Copyright Owner Participants.

5. On the evening of July 20, 2016, Sirius XM's counsel received from Sirius XM's licensing agent, MRI, additional license agreements that Sirius XM had continued to execute since Sirius XM's counsel had gathered direct licenses in May. Sirius XM immediately produced those documents to counsel for the Copyright Owner Participants on July 22, 2016.

6. At the time the Services filed the Services' Motion to Set Specific Discovery Deadlines and Compel the Copyright Owner Participants' Adherence to their Discovery Obligations (the "Motion") on July 21, 2016, they had received only two out of eight sets of responses and objections in response to the Services' First Requests (from SoundExchange and RIAA).

7. On July 25, 2016, the Services received responses and objections to the Services' First Requests from the other six Copyright Owner Participants. Attached hereto as Exhibits C-H are true and correct copies of responses and objections to the Services' First Requests on behalf of Sony Music Entertainment ("SME"), Universal Music Group ("UMG"), Warner Music Group ("WMG"), the American Association of Independent Music ("A2IM"), the American

Federation of Musicians of the United States and Canada (“AFM”), and the Screen Actors Guild and American Federation of Television and Radio Artists (“SAG-AFTRA”), respectively.

8. On August 3, 2016—the date the Services’ reply filing on this Motion was due—the Services received a small production of documents from the files of SoundExchange, AFM, and SAG-AFTRA. Those documents were produced too late for review prior to submission of this declaration, but as of the date of this declaration, none of the other Copyright Owner Participants, including the three major record companies, have produced any documents responsive to the Services’ requests, including the digital service payment/usage data and financial information described in the Services’ reply brief.

9. Also on August 3, 2016, counsel for the Services met and conferred with counsel for the Copyright Owner Participants regarding their document production (or lack thereof). While counsel for the Copyright Owner Participants agreed to discuss with their clients certain compromise proposals made by the Services—for example, producing payment and usage information related to ten digital services identified by the Services—they were unable to say whether their clients would agree to such compromises or, if they did agree, when such documents would be produced. They were also unable to say when any other documents responsive to any of the Services’ requests would be produced, but only that they were discussing the requests with their clients and gathering and reviewing some other documents.

10. Based on my communications with counsel for the Copyright Owner Participants, it remains unclear when the Copyright Owner Participants intend to produce any of the other requested documents.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: August 3, 2016  
New York, NY


  
Todd Larson (N.Y. Bar No. 4358438)  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, NY 10153  
Tel: (212) 310-8238  
Fax: (212) 310-8007  
todd.larson@weil.com

*Counsel for Sirius XM Radio Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2016, I caused a copy of the Reply in Support of Services' Motion to Set Specific Discovery Deadlines and Compel the Copyright Owner Participants' Adherence to Their Discovery Obligations and the accompanying Declaration of Todd Larson, to be served by email and overnight mail to the participants listed below:

<p>David Handzo Michael DeSanctis Steven Englund Jared Freedman JENNER &amp; BLOCK LLP 1099 New York Ave., NW, Suite 900 Washington, DC 20001 P: 202-639-6000 F: 202-639-6066 dhandzo@jenner.com mdesantis@jenner.com senglund@jenner.com jfreedman@jenner.com</p> <p><i>Counsel for SoundExchange (SX); The American Federation of Musicians of the United States and Canada (AFM); Screen Actors Guild and American Federation of Television and Radio Artists (SAG-AFTRA); American Association of Independent Music (A2IM); Universal Music Group (UMG); Sony Music Entertainment (SME); Warner Music Group (WMG); Recording Industry Association of America (RIAA)</i></p>	<p>Benjamin Marks Elisabeth Sperle WEIL, GOTSHAL &amp; MANGES LLP 767 Fifth Avenue New York, NY 10153 P: 212-310-8000</p> <p>F: 212-310-8007 benjamin.marks@weil.com elisabeth.sperle@weil.com</p> <p><i>Counsel for Muzak LLC</i></p>
<p>George Johnson GEO Music Group 23 Music Square East, Suite 204 Nashville, TN 37203 Tel: 615-242-9999 george@georgejohnson.com</p> <p><i>Pro Se Participant</i></p>	

  
Todd Larson



Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
The Library of Congress

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and "Preexisting"  
Subscription Services (SDARS III)

Docket No. 16-CRB-0001-SR/PSSR

(2018-2022)

**SOUNDEXCHANGE'S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO SIRIUS XM RADIO, INC.**

SoundExchange, Inc. serves this First Set of Requests for Production of Documents on Sirius XM Radio, Inc. These Requests are continuing in nature and may require supplementation.

**DEFINITIONS AND INSTRUCTIONS**

1. The present tense shall be construed to include the past and future tenses and the past and future tenses shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these document requests.
2. The singular shall be construed to include the plural and the plural shall be construed to include the singular as required by the context to elicit all information discoverable within the broadest scope of these document requests.
3. "And" and "or" have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these document requests.
4. "Any" and "all" shall mean "each and every."

5. The term "documents" shall be construed broadly, consistent with the Federal Rules of Civil Procedure, and includes but is not limited to every writing, recording, photograph, summary, spreadsheet or record in any form, whether handwritten, printed, typed, taped, electronic or in any other graphic, digital, magnetic, optical, or mechanical form, however produced, reproduced, or recorded and includes electronic documents (such as electronic mail messages and all attachments to mail messages).

6. The term "communication" means the transmittal of information by any means and includes communication of any kind, whether written, oral, electronic, or other.

7. The term "including" is illustrative and not limitative and shall be construed to elicit all information discoverable within the broadest scope of these document requests.

8. The terms "reflecting," "referring," "concerning," "relating to," "related to" and "showing" includes: addressing, pertaining to, referring to, concerning, comprising, identifying, stating, consisting of, evidencing, alluding to, responding to, connected with, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of, incorporating, mentioning, embodying, containing, studying, reporting on, commenting on, considering, recommending, constituting in any way, or having any logical or factual connection with the subject matter.

9. "Sirius XM" refers to Sirius XM Radio, Inc., its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, and predecessors of its corporate affiliates; parents, subsidiaries, business units and divisions, and their representatives, officers, agents, servants, counsel, employees, consultants, and any person authorized to act, acting, or purporting to act on their behalf. In particular, "Sirius XM" refers to the persons who will be submitting

witness statements as part of the Written Direct Statement of Sirius XM in this proceeding, including the entities they represent.

10. "You" and "your" refer to Sirius XM as defined above and/or the witnesses and experts submitting testimony in this proceeding as part of the written direct case of Sirius XM.

11. "Direct Licenses" refers to agreements Sirius XM has obtained directly from copyright owners, record companies, or artists or composers granting the rights that Sirius XM needs to perform and reproduce sound recordings on its various services.

12. "OEM" refers to Original Equipment Manufacturer, and includes but is not limited to all automobile manufacturers and retailers.

13. Please provide separate and sequential written responses to all of the following document requests, and repeat each request and the number of each request with each response. Please group documents in order based on their request number. If you object to any request, identify the number of the request to which you object, state the basis for your objection in sufficient detail so as to permit the adjudication of the validity of the objection, and produce any documents responsive to the portion of the request that you do not find objectionable.

14. Documents sought in these requests include documents currently or previously within your knowledge, possession, or control, as well as those documents which come into your possession subsequent to service thereof, including without limitation documents that are in the possession, custody, or control of Sirius XM's attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with Sirius XM. Each of the following document requests is continuing in nature and SoundExchange hereby requests that if you obtain any additional responsive documents at any later date, you promptly so inform SoundExchange and produce those documents.

15. When any requests calls for the production of any portion of any document, the entire document containing any such portion must be produced.

16. Unless otherwise indicated in a particular request, the requests below cover the following time periods:

- a) Requests 1 through 13 cover the time period from January 1, 2011 through 2022 unless otherwise indicated; and
- b) Requests 14 through 46 cover the time period from January 1, 2013 through 2022, unless otherwise indicated.

Documents created outside of the relevant time period but that reference or relate to the relevant time period are responsive.

17. Please produce all written responses and objections for delivery no later than July 12, 2016, and produce all responsive documents for delivery no later than July 20, 2016. Please deliver one set of all responsive documents, response and objections to Jenner & Block LLP at the address below:

Alex S. Trepp  
JENNER & BLOCK LLP  
1099 New York Ave., N.W., Suite 900  
Washington, D.C. 20001  
(v) 202-637-6385  
(f) 202-639-6066  
atrepp@jenner.com

18. Documents offered in response to these requests must be furnished in as organized and usable form as possible. Specifically, hard copy paper documents shall be scanned as single-page, Group IV compression TIFF images of at least 300 dots per inch (DPI), and each image shall have a unique file name, which is the Bates/control number of the document. Electronic documents shall also be produced in single-page TIFF format, with the exception of spreadsheets, databases, and audio or video files, which shall be produced in their native format with a Bates-labeled placeholder TIFF image.

19. To the extent documents responsive to a request were produced as initial disclosures, you do not need to produce them in response to a request if you identify them by Bates number in your written response to the request.

#### **DOCUMENT REQUESTS**

1. All Direct Licenses executed by Sirius XM, including all renewal agreements, amendments, extensions, and side agreements.
2. All documents constituting or discussing communications with sound recording copyright owners, record companies, artists or composers concerning Direct Licenses or potential Direct Licenses, including all documents constituting, reflecting, or referring to the negotiations of the Direct Licenses and drafts of such Direct Licenses, whether or not a Direct License was ultimately executed.
3. A list of all of the copyright owners, record companies, artists or composers contacted, either in writing or otherwise, about Direct Licenses or potential Direct Licenses.
4. A list of all of the copyright owners, record companies, artists or composers that have signed Direct Licenses.
5. All reports, memoranda, communications, presentations, or other documents discussing, analyzing or tracking the status of Sirius XM's Direct License activities.
6. Documents sufficient to show the share of total plays on Sirius XM's SDARS service represented by the catalogues of direct-licensed copyright owners, record companies, artists or composers, including any play share analysis.
7. For each copyright owner, record company, artist or composer that entered into a Direct License, information sufficient to show on a monthly basis the number of times its recordings were played on the SDARS service in the two years before the Direct License and in the time since the Direct License was executed.
8. All documents referring or relating to any policy or practice of performing recordings covered by Direct Licenses more frequently than other recordings or more frequently than those sound recordings would otherwise have been performed, and any preference given to direct-licensed sound recordings, including documents referring or relating to the implementation of any such policy or practice and including documents referring or relating to whether and how Sirius XM informs its programmers to increase or alter the number of plays of recordings covered by Direct Licenses.
9. All documents sufficient to show any tracking by programmers or others of plays of direct-licensed sound recordings, or whether and how Sirius XM tracks or monitors the degree to which its programmers are using direct-licensed sound recording.

10. For each copyright owner, record company, artist or composer that has accepted a Direct License, all documents constituting reports provided to the licensor by Sirius XM pursuant to the terms of the Direct License, including but not limited to reports of use, statements of account, and payment histories.
11. All documents referring or relating to Sirius XM's plans and strategies for direct licensing of sound recordings, or analyzing the economics of actual or potential direct licenses or of the strategy of entering into direct licenses more broadly.
12. All documents referring or relating to the impact or effect of playing direct-licensed sound recordings, and increases or decreases thereof, on subscriber levels, churn rates, listening levels, and subscriber satisfaction.
13. All documents referring or relating to whether the sound recordings of a copyright owner, record company, artist or composer are "over-indexed" on Sirius XM's webcasting service as compared to its SDARS service. For purposes of this request, "over-indexed" means that the sound recording royalties as calculated by Sirius XM pursuant to its Direct License agreements, based on the number of performances (*i.e.*, number of plays times the number of listeners for each play) on Sirius XM's webcasting service, are or may be higher than the sound recording royalties for the same licensor calculated pursuant to the methodology based on the number of plays on the SDARS service.
14. All OEM agreements currently in effect.
15. All content agreements currently in effect entered into by Sirius XM for sports, talk, news, and all other non-music content.
16. Documents sufficient to show the amount of money or other compensation that Sirius XM has expended or is expending for non-music content, separately for each content provider and in the aggregate.
17. All documents constituting, reflecting or referring to the negotiation of Howard Stern's most recent contract renewal.
18. All agreements with Performing Rights Organizations ("PROs") currently in effect, and all agreements with other entities for the licensing of musical works currently in effect, and documents sufficient to show Sirius XM's payments to the PROs and other such entities on an annual basis since January 1, 2013.
19. All agreements for the licensing, or otherwise authorizing the performance of, pre-1972 sound recordings since January 1, 2013.
20. All agreements with copyright owners, record companies, artists or composers for recording sessions, creation of exclusive content, appearances on Sirius XM, channels dedicated a particular artist, composer or record company, and similar agreements since January 1, 2015.

21. All audited and unaudited financial statements, at every level of specificity at which they are created or maintained, including but not limited to income statements, balance sheets, projections, profit and loss statements, budgets, and cash flow statements, together with all supporting schedules, analyses and other materials related to, or used to support such statements.
22. Documents sufficient to show Sirius XM's total annual expenses, each source or category of expense incurred by Sirius XM and the amount of each such source or category of expense, including but not limited to expenses from the following categories: (a) royalties for musical compositions; (b) royalties for sound recordings subject to the statutory license at issue in this proceeding; (c) royalties for sound recordings covered by Direct Licenses; (d) royalties for sound recordings subject to other statutory licenses; (e) marketing costs; (f) costs associated with promoting artists and sound recordings; (g) expenses related to music content programming; (h) expenses related to non-music content programming; (i) expenses related to equipment development and manufacturing; (j) expenses related to Sirius XM's satellites and repeater network; (k) bandwidth for internet transmissions; (l) incentives to OEMs; (m) overhead, including, without limitation, salaries, health insurance, telephone, internet, facilities, etc.; (n) capital expenditures; and (o) all other significant expenses, identified individually, to the extent not otherwise produced in response to this request.
23. Documents sufficient to show Sirius XM's total annual revenues, each source or category of revenue generated by Sirius XM and the amounts of such source or category of revenue, including but not limited to revenue from the following categories: (a) subscriptions (broken down by subscription package); (b) the U.S. Music Royalty Fee; (c) customer activation fees; (d) advertising; (e) CD sales; (f) receiver and other related equipment sales; (g) automotive partnerships; (h) rental car companies; (i) airline companies; (j) any other third party licensed to transmit Sirius XM's programming; (k) sales of portable radios and similar devices; (l) data services; (m) royalties and other revenue; (n) all other significant revenue, identified individually, to the extent not otherwise produced in response to this request.
24. All short-term and long-term financial projections, forecasts, budgets or analyses, reflecting the projected future financial condition, profits, losses, costs, revenues, subscribers and other measures of Sirius XM's performance up to and including the year 2022, including but not limited to projections or other forecasts concerning revenues, broken down by category or source of revenue and year, and costs, broken down by category of cost and year.
25. Documents sufficient to show Sirius XM's estimation of its variable costs of providing its SDARS service from 2013 through the present, as well as any projections of future variable costs of providing the SDARS service through 2022.
26. All business plans and documents related to strategies and strategic planning for Sirius XM's SDARS service.

27. All documents or presentations provided or presented to potential or actual investors, financial or investment analysts, potential or actual lenders, members of the Board of Directors, or any others concerning the projected costs, revenues, profits, losses, financial condition, subscribers, business plans and strategies of Sirius XM or the satellite radio industry, including but not limited to the royalty rate for the performance of sound recordings, Sirius XM's Direct License initiative and the U.S. Music Royalty Fee, as well as materials used in preparation for such documents or presentations, and documents used to prepare for calls or meetings with any such individuals.
28. All documents reflecting Sirius XM's customer churn rates, including without limitation documents reflecting Sirius XM's analysis of the impact or potential impact of actual or potential changes in its subscription prices or the Music Royalty Fee on subscriber levels or churn rates.
29. All documents related to Sirius XM's strategies, projections, plans, and income from the U.S. Music Royalty Fee, including but not limited to all documents, plans, studies, projections, communications, or analyses about past implementation and changes to the U.S. Music Royalty Fee and any actual or potential future changes, the number of subscribers currently assessed the U.S. Music Royalty Fee, the method of computing or calculating the U.S. Music Royalty Fee to be assessed, and the amount of monthly revenue collected through application of the U.S. Music Royalty Fee.
30. Documents sufficient to show the number of subscribers to each type of subscription and subscription package, including any and all mostly non-music packages, and individual month-to-month subscriptions, business establishment subscriptions, family plan subscriptions, annual subscriptions, lifetime subscriptions, and any other subscription type, and the monthly pricing basis and amount of revenue from each type of subscription and subscription package on an annual basis.
31. Documents sufficient to show Sirius XM's current and projected satellite, network and other capital expenses, depreciation, and plans for financing or paying for such expenses through 2022.
32. Documents sufficient to show Sirius XM's planned satellite launch schedules through 2022, satellite insurance costs, and documents related to any plans to or consideration of self-insuring.
33. All analyst reports and transcripts of earning calls related to Sirius XM.
34. Documents sufficient to show Sirius XM's level of indebtedness and debt maturities through 2022.
35. All documents related to any stock buy-backs or planned stock buy-backs, including the number of shares purchased and the timing and price of purchases.
36. Documents sufficient to show Sirius XM's hosting and bandwidth costs for its webcasting service.

37. All documents related to the results of surveys of Sirius XM's subscribers and/or other consumers, including but not limited to surveys related to the reasons that people subscribe or listen to Sirius XM, the reasons they have discontinued their subscriptions, subscribers' favorite channels or types of programming and/or the channels or types of programming they listen to most, the amount of time that subscribers listen to Sirius XM's service or particular channels or channel types, the willingness of Sirius XM's subscribers or potential subscribers to pay current or increased subscription rates and the US Music Royalty Fee, the value of music content to Sirius XM's subscribers and potential subscribers, and the extent, if any, to which subscribing to Sirius XM has increased or decreased a subscriber's purchases of recorded music or use of music streaming services.
38. Documents related to analysis of Sirius XM's pricing, including but not limited to any analyses of the elasticity of demand for Sirius XM's SDARS service, and including Sirius XM's ability to raise prices in the upcoming rate period and the potential impact of any such increase.
39. Documents related to any plans or potential plans to increase or reduce Sirius XM's subscription prices.
40. Documents sufficient to show Sirius XM's computations or calculations of its monthly "Gross Revenues" as defined in 37 CFR § 382.11 and royalty payments as specified in 37 CFR §§ 382.12 & .13, including documents sufficient to show the amounts excluded from Gross Revenue or royalty payments under the regulations, and the basis for each exclusion.
41. Documents sufficient to show any impact that wifi-connected cars have had, or are projected to have, on Sirius XM's SDARS service, including without limitation any analyses or projections of the number of wifi-connected cars existing currently or projected to exist through 2022.
42. Documents constituting or relating to any strategic or business plans for addressing competition between Sirius XM's SDARS service and content providers whose services are or will become available in wifi-connected cars.
43. Documents discussing or analyzing any current or anticipated future competitors with Sirius XM's SDARS service, including the identities of such competitors by name or type of service, the nature of the competitive services offered or anticipated, and the market characteristics for each existing or anticipated competitor, including without limitation the service offerings, target markets, cost structures, price levels, and demand elasticities for such competitors.
44. Documents related to any purported promotional or substitutional value or effect of Sirius XM's SDARS service on the sale, streaming or licensing of sound recordings, including documents quantifying any such promotional or substitutional value or effect.

45. Documents sufficient to show in detail the expected functionality, pricing and roll-out plans of SXM17, including the projected financial impact on Sirius XM.

46. All documents used or relied on as a basis for your proposed rates or terms.

Dated: June, 21, 2016

Respectfully submitted,

By /s/ David A. Handzo

David A. Handzo (DC Bar 384023)

Michael B. DeSanctis (DC Bar 460961)

Steven R. Englund (DC Bar 425613)

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senglund@jenner.com

jfreedman@jenner.com

*Counsel for SoundExchange, Inc.*

**CERTIFICATE OF SERVICE**

I, Devi M. Rao, do hereby certify that, on the 21st day of June, 2016, copies of the foregoing motion were sent via electronic mail and First Class Mail to all parties at the email addresses listed below:

R. Bruce Rich  
Randi Singer  
Todd Larson  
David Yolkut  
Jacob Ebin  
WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
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*Counsel for SiriusXM Radio, Inc.*

Dated: June 21, 2016

/s/ Devi M. Rao  
Devi M. Rao



Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
The Library of Congress

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and “Preexisting”  
Subscription Services (SDARS III)

Docket No. 16–CRB–0001–SR/PSSR

(2018–2022)

**SOUNDEXCHANGE’S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO MUSIC CHOICE**

SoundExchange, Inc. serves this First Set of Requests for Production of Documents on Music Choice. These Requests are continuing in nature and may require supplementation.

**DEFINITIONS AND INSTRUCTIONS**

1. The present tense shall be construed to include the past and future tenses and the past and future tenses shall be construed to include the present tense as required by the context to elicit all information discoverable within the broadest scope of these document requests.
2. The singular shall be construed to include the plural and the plural shall be construed to include the singular as required by the context to elicit all information discoverable within the broadest scope of these document requests.
3. “And” and “or” have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these document requests.
4. “Any” and “all” shall mean “each and every.”

5. The term "documents" shall be construed broadly, consistent with the Federal Rules of Civil Procedure, and includes but is not limited to every writing, recording, photograph, summary, spreadsheet or record in any form, whether handwritten, printed, typed, taped, electronic or in any other graphic, digital, magnetic, optical, or mechanical form, however produced, reproduced, or recorded and includes electronic documents (such as electronic mail messages and all attachments to mail messages).

6. The term "communication" means the transmittal of information by any means and includes communication of any kind, whether written, oral, electronic, or other.

7. The term "including" is illustrative and not limitative and shall be construed to elicit all information discoverable within the broadest scope of these document requests.

8. The terms "reflecting," "referring," "concerning," "relating to," "related to" and "showing" includes: addressing, pertaining to, referring to, concerning, comprising, identifying, stating, consisting of, evidencing, alluding to, responding to, connected with, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of, incorporating, mentioning, embodying, containing, studying, reporting on, commenting on, considering, recommending, constituting in any way, or having any logical or factual connection with the subject matter.

9. "Music Choice" refers to Music Choice, its corporate affiliates, parents, subsidiaries, business units, divisions, predecessors, and predecessors of its corporate affiliates, parents, subsidiaries, business units and divisions, and their representatives, officers, agents, servants, counsel, employees, consultants, and any person authorized to act, acting, or purporting to act on their behalf, and includes the fact and expert witnesses submitting testimony in this proceeding as part of the written direct case of Music Choice.

10. "You" and "your" refer to Music Choice as defined above and/or the witnesses and experts submitting testimony in this proceeding as part of the written direct case of Music Choice.

11. "Direct Licenses" refers to agreements Music Choice has obtained directly from copyright owners, record companies, or artists or composers granting the rights that Music Choice needs to perform and reproduce sound recordings on its various services.

12. "CabSat" means non-PSS services which provide audio digital music programming via residential television service using cable or satellite television providers or other multichannel video programming distributors.

13. Please provide separate and sequential written responses to all of the following document requests, and repeat each request and the number of each request with each response. Please group documents in order based on their request number. If you object to any request, identify the number of the request to which you object, state the basis for your objection in sufficient detail so as to permit the adjudication of the validity of the objection, and produce any documents responsive to the portion of the request that you do not find objectionable.

14. Documents sought in these requests include documents currently or previously within your knowledge, possession, or control, as well as those documents which come into your possession subsequent to service thereof, including without limitation documents that are in the possession, custody, or control of Music Choice's attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with Music Choice. Each of the following document requests is continuing in nature and SoundExchange hereby requests that if you obtain any additional responsive documents at any later date, you promptly so inform SoundExchange and produce those documents.

15. When any requests calls for the production of any portion of any document, the entire document containing any such portion must be produced.

16. Unless otherwise indicated in a particular request, the requests below cover the time period from January 1, 2013 through 2022. Documents created outside of the relevant time period but that reference or relate to the relevant time period are responsive.

17. Please produce all written responses and objections for delivery no later than July 12, 2016, and produce all responsive documents for delivery no later than July 20, 2016. Please deliver one set of all responsive documents, response and objections to Jenner & Block LLP at the address below:

Alex S. Trepp  
JENNER & BLOCK LLP  
1099 New York Ave., N.W., Suite 900  
Washington, D.C. 20001  
(v) 202-637-6385  
(f) 202-639-6066  
atrepp@jenner.com

18. Documents offered in response to these requests must be furnished in as organized and usable form as possible. Specifically, hard copy paper documents shall be scanned as single-page, Group IV compression TIFF images of at least 300 dots per inch (DPI), and each image shall have a unique file name, which is the Bates/control number of the document. Electronic documents shall also be produced in single-page TIFF format, with the exception of spreadsheets, databases, and audio or video files, which shall be produced in their native format with a Bates-labeled placeholder TIFF image.

19. To the extent documents responsive to a request were produced as initial disclosures, you do not need to produce them in response to a request if you identify them by Bates number in your written response to the request.

### DOCUMENT REQUESTS

1. All audited and unaudited financial statements, at every level of specificity at which they are created or maintained, including but not limited to income statements, balance sheets, projections, profit and loss statements, budgets, and cash flow statements, together with all supporting schedules, analyses and other materials related to, or used to support such statements.
2. Documents sufficient to show Music Choice's total annual expenses, each source or category of expense incurred by Music Choice and the amount of each such source or category of expense, including but not limited to expenses from the following categories: (a) royalties for musical compositions; (b) royalties for sound recordings; (c) expenses related to music content programming; (d) expenses related to on-screen displays; (e) marketing costs; (f) costs associated with promoting artists and recordings; (g) overhead, including, without limitation, salaries, health insurance, telephone, internet, facilities, etc.; (h) depreciation expense, including a breakdown of depreciation expense related to residential service, commercial service, on-demand music video service, and the SWRV video channel; and (i) all other significant expenses, identified individually, to the extent not otherwise produced in response to this request.
3. Documents sufficient to show Music Choice's total annual revenues, each source or category of revenue generated by Music Choice, and the amounts of such source or category of revenue, including but not limited to revenue from the following categories: (a) subscriptions for Music Choice's residential service; (b) subscriptions for Music Choice's commercial service; (c) advertising on Music Choice's residential service; (d) advertising on Music Choice's commercial service; (e) on-demand music video service for the cable affiliates; (f) CD sales; (g) agreements with all affiliates, both cable and others, for the transmission of Music Choice's services; (h) the SWRV video channel; and (i) all other significant sources of revenue, identified individually, to the extent not otherwise produced in response to this request.
4. All short-term and long-term financial projections, forecasts, budgets or analyses, reflecting the projected future financial condition, profits, losses, costs, revenues, subscribers and other measures of Music Choice's performance up to and including 2022, including but not limited to projections or other forecasts broken down by categories and year.
5. Documents sufficient to show all of Music Choice's costs associated with its performances of sound recordings subject to the statutory licenses at issue in this proceeding.
6. Documents sufficient to show all of Music Choice's costs associated with its performances of sound recordings not subject to the statutory licenses at issue in this proceeding.

7. Documents sufficient to show estimations of variable costs of providing the residential service from 2013 through the present, plus any projections of future variable costs through 2022.
8. All business plans and documents related to strategies for the residential service.
9. All documents or presentations provided or presented to potential or actual investors, financial or investment analysts, members of the Board of Directors, or any others concerning the projected costs, revenues, profits, losses, financial condition, subscribers, business plans and strategies of Music Choice.
10. Documents sufficient to show the ownership interests in Music Choice.
11. All agreements between Music Choice and persons or entities owning interests in Music Choice, and any other documents necessary to show any financial arrangements between Music Choice and such persons or entities.
12. Documents sufficient to identify all multi system operators, satellite providers, cable operators or similar companies or systems that offer Music Choice's residential service to customers, including all agreements between Music Choice and those companies to carry or transmit Music Choice's residential service and programming.
13. For each such company, documents sufficient to identify on a monthly basis the number of subscribers who receive the service through each of those companies, the channels provided through such company and Music Choice's revenue from the company.
14. All content agreements Music Choice has entered into for music or other content.
15. All documents related to the results of surveys of Music Choice's distributors, subscribers and other consumers, including but not limited to surveys related to the reasons that people subscribe or listen to the service, the time that subscribers listen to the service or particular channels or channel types, the willingness of distributors, subscribers or potential distributors or subscribers to pay for the service, and the value of the service or its music content to distributors or subscribers.
16. Documents related to analysis of Music Choice's pricing, including but not limited to the price-elastic and/or price-inelastic demand for Music Choice's SDARS service, and including Music Choice's ability to raise prices in the upcoming rate period and the impact of any such increase.
17. All documents related to any purported promotional or substitutional value or effect of Music Choice's residential service on the sale, streaming or licensing of sound recordings, including documents quantifying any such promotional or substitutional value or effect.
18. All of Music Choice's agreements with Performing Rights Organizations ("PROs") since January 1, 2013, and documents sufficient to show Music Choice's payments to PROs on an annual basis during that period.

19. All documents related to Music Choice's consideration of increased usage of sound recordings, including documents related to any consideration to introduce additional channels.
20. All Direct Licenses for the performance of sound recordings executed by Music Choice, including all renewal agreements, amendments, extensions, and side agreements.
21. If you plan to present any evidence relating to international royalty rates, all agreements with societies or copyright owners for the licensing of sound recordings or musical works outside the U.S.
22. All documents related to the results of surveys of Music Choice's subscribers and/or other consumers, including but not limited to surveys related to the reasons that people subscribe or listen to Music Choice, the reasons they have discontinued their subscriptions, a subscriber's favorite channels or types of programming and/or the channels or types of programming they listen to most, the amount of time that subscribers listen to Music Choice's service or particular channels or channel types, the willingness of Music Choice's subscribers or potential subscribers to pay current or increased subscription rates, the value of music content to subscribers and potential subscribers, and the extent, if any, to which subscribing to Music Choice has increased or decreased a subscriber's purchase of recorded music or use of music streaming services.
23. All documents related to any analysis of or decision to pay royalties for service at the pre-existing service rates (as opposed to the CabSat rates), including documents related to any cost-savings or cost comparisons between the two rates, and analyses of the relative economics of acquiring new services and their subscribers at the pre-existing services rates versus the CabSat rates.
24. To the extent consistent with the parties' agreement limiting expert discovery, all documents reviewed, consulted, relied upon, or cited in preparing the written testimony of each witness submitting testimony as part of your Written Direct Statement, including each document (including computer files) that constitutes, records, or analyzes any data and/or document provided to the witness in connection with this proceeding. Where data was provided in a summary, chart, or compilation, provide each underlying document that was consulted or relied upon in preparing each summary, chart, or compilation, including all documents and materials identified in 37 C.F.R. § 351.10.
25. All documents used or relied on as a basis for your proposed rates or terms.

**CERTIFICATE OF SERVICE**

I, Devi M. Rao, do hereby certify that, on the 21st day of June, 2016, copies of the foregoing motion were sent via electronic mail and First Class Mail to all parties at the email addresses listed below:

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*Counsel for Music Choice*

Dated: June 21, 2016

/s/ Devi M. Rao  
Devi M. Rao



**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress**

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and "Preexisting"  
Subscription Services (SDARS III)

Docket No. 16-CRB-0001-SR/PSSR  
(2018-2022)

**SONY'S RESPONSES AND OBJECTIONS TO THE FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO SONY MUSIC ENTERTAINMENT FROM  
SIRIUS XM, MUSIC CHOICE, AND MUZAK**

Sony Music Entertainment ("Sony"), by its attorneys, hereby responds and objects to the First Set of Requests for Production of Documents to Sony from Sirius XM, Music Choice, and Muzak (the "Requests").

**GENERAL OBJECTIONS**

1. Sony objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon Sony requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, or any other applicable rule or order governing this proceeding, including applicable prior precedent.

2. Sony objects to the Requests, including all Definitions and Instructions, as premature to the extent that they purport to impose a duty on Sony to produce documents. While Sony is willing to make certain voluntary disclosures of information before it submits its written direct case, Congress contemplated that discovery in CRB royalty rate proceedings would commence after submission of the Participants' written direct statements and according to a schedule issued after the Copyright Royalty Judges considered the views of Participants in the proceeding. 17

U.S.C. § 803(b)(6)(C)(i), (ii). The CRB regulations likewise contemplate that a discovery schedule will issue after the Participants submit written direct statements and after the Copyright Royalty Judges have conferred with the Participants. 37 C.F.R. § 351.5(a). Any documents that Sony agrees to produce prior to the submission of its written direct statement will be produced on a voluntary basis. Sony reserves its rights to challenge the CRB's authority to require discovery prior to the submission of written direct statements.

3. Sony objects to the Requests, including all Definitions and Instructions, as premature because the parties have not yet submitted written direct statements. The Requests therefore seek documents that necessarily are not "directly related" to SoundExchange and/or Sony's written direct statement. *See* 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

4. Sony objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

5. Sony objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad, and/or unduly burdensome, and to the extent they would require Sony to spend an unreasonable amount of time, effort, and resources in order to respond.

6. Sony objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests or call for information that is publicly available and readily accessible. Such Requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

7. Sony objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product immunity doctrine, and any other applicable privilege or doctrine.

8. Sony objects to the Requests, including all Definitions and Instructions, to the extent any Request contains factually inaccurate information or statements, is argumentative, is predicated on erroneous assumptions or states legal conclusions. A statement herein that Sony will produce documents responsive to a Request does not indicate and should not be construed as meaning that Sony agrees, admits, or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, or that the documents are relevant and admissible.

9. Sony objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not in the possession, custody, or control of Sony, including documents from other parties.

10. Sony objects to the Requests, including all Definitions and Instructions, to the extent they seek documents from other proceedings. Such Requests are overbroad, harassing, and unduly burdensome. Sony further objects to such Requests to the extent they violate or are inconsistent with any statute, rule, order, or other authority governing the other proceeding, including applicable protective orders and prior precedent.

11. Sony objects to the Requests, including all Definitions and Instructions, to the extent they seek “all documents” of a certain nature, as vague, ambiguous, overbroad, and unduly burdensome.

12. Sony objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive, and harassing to the extent they seek the production of draft documents, which may be numerous and irrelevant to resolution of the issues in this proceeding.

13. Sony objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that do not exist or are not maintained in the ordinary course of business. Sony further objects to the Requests, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business.

14. Sony objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive and harassing, to the extent the Requests seek to impose an obligation to search for documents from every label with a larger record company.

15. By agreeing to search for and produce documents responsive to any particular Request, Sony does not represent that such documents exist or that they are in the possession, custody or control of Sony, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

16. Sony reserves any and all objections to the use or admissibility in any proceeding of any information, material, documents, or communications identified, produced or disclosed in response to the Requests.

17. Sony objects to the requested date of production as unduly burdensome, and providing insufficient time for Sony to locate responsive documents. If Sony agrees to produce documents, Sony will produce as set forth below and after conducting a reasonable search.

18. The responses and objections contained herein are made to the best of Sony's present knowledge, belief, and information, and are based on a reasonable, diligent, and ongoing search. Sony reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

#### **OBJECTIONS TO DEFINITIONS**

1. Sony objects to the definition of "Digital Music Service" in Definition No. 1 to the extent it purports to define the relevant universe of services as broadly as possible without limitation to issues that are relevant to this proceeding. To the extent the Requests purport to impose an obligation to produce documents related to the overbroad array of services described in the definition, including documents for services operating outside of the United States, Sony objects to the definition as irrelevant, overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding.

2. Sony objects to the definition of "Document" and "documents" in Definition No. 2 to the extent it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule, order or precedent governing this proceeding, and to the extent it suggests that the Federal Rules of Civil Procedure govern discovery in this proceeding.

3. Sony objects to the definition of “Record Company” in Definition No. 6 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose an obligation to produce documents related to any record company that is not a participant in this proceeding.

4. Sony objects to the definition of “Sony” in Definition No. 8 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including anyone acting on Sony’s behalf.

#### **OBJECTIONS TO INSTRUCTIONS**

1. Sony objects to the Instructions to the extent they seek to impose obligations that are inconsistent with or not supported by the governing statute or regulations.

2. Sony objects to Instruction No. 1 to the extent it is inconsistent with the requirements imposed by statute, regulations and the Court’s “Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order.”

3. Sony objects to Instruction No. 2 as overbroad, unduly burdensome, harassing, oppressive, and exceedingly vague to the extent that it seeks to impose an obligation to collect documents from an unreasonably wide array of people and entities, including “Sony’s attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with Sony.” There are numerous people and entities who might fit this description and the request to produce documents in the possession of any of them is egregiously overbroad.

4. Sony objects to Instruction No. 5's request for a privilege log, which purports to impose upon Sony requirements that exceed 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding. The governing statute and regulations do not provide for the exchange of privilege logs, and providing privilege logs would be extremely burdensome given the limited time for discovery in this proceeding. Sony will not produce a privilege log in connection with its production of documents.

5. Sony objects to Instruction No. 7 to the extent it seeks to impose an obligation to interpret language that is ambiguous.

6. Sony objects to Instruction No. 9 to the extent it seeks documents from time periods the Services themselves have deemed not reasonably related to the matters in this proceeding (i.e., time periods prior to January 1, 2013). Unless otherwise indicated in response to a specific Request, where Sony agrees to search for and produce documents, it will only search for and produce documents for the time period January 1, 2013 through the present.

#### **RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

Subject to and without waiving the foregoing objections, Sony sets forth below specific responses and objections to the Requests.

**Document Request No. 1.** All agreements executed or in effect between January 1, 2013 and the present between any Digital Music Service and Sony, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, renewed, adapted, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks "all"

responsive documents. Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to subject matters at issue in this proceeding, to the extent it seeks agreements with “any Digital Music Service.” As set forth in Sony’s Objections to Definitions above, “Digital Music Service” is defined too broadly and not reasonably limited to the issues in this proceeding.

Without waiver of and subject to Sony’s general and specific objections, Sony is conducting a reasonable and diligent search for and is producing interactive/on-demand webcasting, custom radio, non-interactive webcasting, and video agreements, plus any other agreements provided to Sony’s expert witnesses in this proceeding, including amendments, extensions and renewals, executed on or after January 1, 2013. If an agreement was amended, extended or renewed after that date, Sony is conducting a reasonable and diligent search for and producing the original agreement and the post-January 1, 2013 amendments, extensions and renewals.

**Document Request No. 2.** All agreements executed between January 1, 2013, and the present between any PSS and Sony, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, adapted, renewed, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks “all” responsive documents. Sony objects to this request from the PSS (Music Choice and Muzak) to produce their agreements with Sony, because such agreements are already in Music Choice and Muzak’s possession. It is harassing and unnecessary to ask Sony to produce Music Choice’s and Muzak’s agreements back to them.

Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 3.** All agreements executed between January 1, 2013, and the present in any other service category that Sony intends to use as a benchmark in this proceeding, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, renewed, adapted, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks "all" responsive documents. Sony objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding.

Without waiver of and subject to Sony's general and specific objections, to the extent that Sony agreements are used by SoundExchange and/or Sony as part of a benchmark in SoundExchange and/or Sony's written direct statement, and to the extent the requested documents have not already been produced, Sony will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 4.** To the extent not encompassed in Requests 1-3 above, Exhibit 11 to Dennis Kooker's written rebuttal testimony in the Web IV proceeding (and all agreement included therein), any subsequent modifications, extensions, and/or renewals of such agreements, and any new agreements with same counter-parties.

**RESPONSE:** Sony objects to this request for materials from a prior proceeding, which are governed by a protective order in that proceeding. Sony objects to the request as not reasonably limited to the issues in this proceeding. The referenced Exhibit contains numerous documents. To the extent the requested documents are not responsive to other document requests, and not relevant to this proceeding, Sony does not agree to produce the requested documents. Without

waiver of and subject to Sony's general and specific objections, to the extent the requested documents are responsive to Requests 1-3 above, and Sony agreed to produce them in response to those requests, Sony will produce the requested documents.

**Document Request No. 5.** For each agreement responsive to Requests 1-4 above, statements, payments, and/or play details sufficient to calculate effective rates for such services from January 1, 2013 to present.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. Sony objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce.

Sony also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Information sufficient to calculate effective rates for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to Sony's general and specific objections, to the extent that Sony agreements are used by SoundExchange and/or Sony as part of a benchmark in SoundExchange and/or Sony's written direct statement, Sony will consider searching for and producing responsive documents for certain relevant agreements. Until that time, Sony does not agree to produce the requested information, if it has any.

**Document Request No. 6.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to the present (as specified by the agreement), documents sufficient to show:

- a. total payments collected from the service;
- b. revenue reported by the service (including the calculation of revenue base, if available);

- c. advances paid during the reporting period;
- d. number of subscribers during the reporting period, including the number of users of various service tiers (e.g., users of free tiers versus paid tiers);
- e. number of streams/plays during the reporting period;
- f. number of downloads, ringtones, ringbacks and/or mastertones sold during the reporting period;
- g. reported advertising and other ancillary revenue;
- h. the service retail price (including all tiers);
- i. Sony's pro rata share for any aspect of the service reported; and
- j. any other data reported to Sony (other than logs of specific songs streamed or downloaded).

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. Sony objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of detailed information that may be extremely burdensome to collect, review and produce.

Sony also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to Sony's general and specific objections, to the extent that Sony agreements are used by SoundExchange and/or Sony as part of a benchmark in SoundExchange and/or Sony's written direct statement, Sony will consider searching for and producing responsive documents for certain relevant agreements. Until that time, Sony does not agree to produce the requested information, if it has any.

**Document Request No. 7.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to present (as specified by each agreement), all royalty statements or statements of account to Sony.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. Sony objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce.

Sony also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to Sony's general and specific objections, to the extent that Sony agreements are used by SoundExchange and/or Sony as part of a benchmark in SoundExchange and/or Sony's written direct statement, Sony will consider searching for and producing responsive documents for certain relevant agreements. Until that time, Sony does not agree to produce the requested information, if it has any.

**Document Request No. 8.** For any agreement that was entered into between a Record Company and any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for any agreement in a category that Sony and/or SoundExchange intends to present as a benchmark in this proceeding, (a) all drafts of such agreements and correspondence concerning such drafts, and (b) all documents, whether internal to the Record Company or between the Record Company and service, concerning the value of the agreement or any of its provisions to either the buyer/licensee or seller/licensor.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues or Participants in this proceeding, to the extent it seeks documents related to "any agreement" responsive to the request. Sony objects to this

request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the Participants in this proceeding, to the extent it seeks documents related to agreements between “a Record Company” and the specified digital music services. As set forth in Sony’s Objections to Definitions above, “Record Company” is defined too broadly and is not reasonably limited to the Participants in this proceeding. Sony further objects to this request to the extent it is duplicative of requests served on other Participants in this proceeding, to the extent it seeks documents not in the possession, custody or control of Sony, and to the extent it seeks documents from record companies that are not Participants or that do not supply a witness for this proceeding.

Sony also objects to this request because agreements speak for themselves and drafts are irrelevant to determining the rates and terms in the agreements themselves, absent ambiguity. Sony also objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it seeks drafts and correspondence for a large number of agreements. Such information would be extremely time-consuming to collect, review and produce, and the burden would far outweigh any alleged benefit.

Sony further objects to the request for valuation information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Valuation information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to Sony’s general and specific objections, to the extent that Sony agreements are used by SoundExchange and/or Sony as part of a benchmark in SoundExchange and/or Sony’s written direct statement, Sony will consider searching for and producing non-

privileged, responsive documents for certain relevant agreements. Until that time, Sony does not agree to produce the requested information, if it has any.

**Document Request No. 9.** For any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for services in any other category of service that Sony and/or SoundExchange intends to present as a benchmark in this proceeding, all analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the market characteristics for each service, including without limitation documents discussing, analyzing, or evidencing:

- a. the consumer demand, price at every level a price is charged, demand or price elasticities, and other characteristics of the Service;
- b. consumer usage of the Service;
- c. whether the Service may serve as a substitute for other Digital Music Services, terrestrial radio, sales of physical copies of sound recordings (e.g., CDs), sales of digital downloads, or for any other distribution channels for sound recordings;
- d. whether the Service promotes or otherwise increases the sale, distribution, or other licensed uses of sound recordings; and
- e. comparisons of the Service with satellite radio or any other Digital Music Service.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. Sony objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce.

Sony also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to Sony's general and specific objections, to the extent that Sony

agreements are used by SoundExchange and/or Sony as part of a benchmark in SoundExchange and/or Sony's written direct statement, Sony will consider searching for and producing non-privileged, responsive documents for certain relevant agreements. Until that time, Sony does not agree to produce the requested information, if it has any.

**Document Request No. 10.** Sony's annual financial statements, whether audited or unaudited, at every level of specificity at which they are created or maintained, including without limitation cost and revenue breakdowns, digital and physical revenue and costs, and digital revenues reported by Digital Music Service category (e.g., non-interactive and custom radio or webcasting services, interactive or on-demand services, video services). For 2016, all available quarterly results should be produced.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information and to the extent it requests projections by categories, that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. Sony objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. Sony objects to this request to the extent it is predicated on erroneous assumptions about the way in which its financial information is organized and maintained. Sony's response should not be construed as meaning that Sony agrees, admits, or otherwise acknowledges that it maintains financial information in the requested categories.

Sony further objects to the request for this information as premature given that the parties have not yet submitted their written direct statements and Sony's financials may not be relevant to SoundExchange's or Sony's written direct statement. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 11.** Documents sufficient to show Sony's projected revenue, costs and expenses by category over the 2016-2022 licensing period.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive, and harassing to the extent it requests projections by categories that may not be maintained in the ordinary course of business or that may be burdensome to collect, review and produce. Sony objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. Sony objects to this request to the extent it is predicated on erroneous assumptions about the way in which its financial information is organized and maintained. Sony's response should not be construed as meaning that Sony agrees, admits, or otherwise acknowledges that it maintains the requested projections for this time period. Sony further objects to the use of the phrase "by category" as vague and ambiguous as it is used in this request.

Sony also objects to the request for this information as premature given that the parties have not yet submitted their written direct statements and Sony's financials may not be relevant to SoundExchange's or Sony's written direct statement. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 12.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. the promotional value and/or substitutional effect of Sirius XM or any PSS on sales, subscriptions to other Digital Music Services, or other sources of revenue;
- b. any substitution between Digital Music Services (including Sirius XM or any PSS) and sales, subscriptions, and radio;
- c. the relative elasticities of demand across different Digital Music Services at both the licensing and consumer sales/use level;
- d. customer preferences related to lean-back or lean-forward experiences or services;

- e. listening of on-demand service users to non-on-demand service features and modes of listening (e.g., non-interactive listening features, playlists);
- f. any purported shift from music ownership to access; and
- g. listening of subscribers to Sirius XM or any PSS.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 13.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the ability of any Digital Music Service to "steer" plays toward or away from particular Record Companies, or to steer listening more generally.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony objects to the request for documents concerning "the ability of any Digital Music Service . . . to steer listening more generally" as overbroad, unduly burdensome, oppressive and harassing, to the extent it is vague, ambiguous, and not reasonably limited to the issues in this proceeding. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 14.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the relative value of the programming of music versus the music itself to consumers of any Digital Music Service.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the comparison contemplated by this request as vague and ambiguous. Without waiver of and subject to Sony’s general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 15.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents addressing and/or quantifying the degree to which plays on on-demand or interactive services (whether in general or particular) are from playlists programmed by the service, from playlists programmed by users of the service or other third-parties, or reflect songs chosen specifically by the user for on-demand listening.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to Sony’s general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 16.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning whether users of interactive services desire features that editorialize, curate, or recommend music, or that such users want to listen to service-programmed plays, including any data, communications or other information regarding the share of programmed plays on such services and (or as compared to ) the share of user-selected plays on such services (including without limitation Spotify, Rdio, Rhapsody, Google Play All Access, Amazon Prime, and Slacker).

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative

information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 17.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. a digital distribution or licensing strategy;
- b. the role of promotion and/or substitution in the licensing strategy; and
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service or terrestrial radio on other sources of revenue.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony further objects to the request for all documents concerning digital distribution or licensing strategy as vastly overbroad, vague and not reasonably limited to issues in this proceeding. There potentially are numerous documents concerning digital distribution or licensing strategy that have absolutely nothing to do with any of the issues in this proceeding. Sony also objects to the extent the request seeks information that may be difficult to locate. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce non-privileged documents responsive to parts (b) and (c) of this request, if any, that can be located after a reasonable and diligent search.

**Document Request No. 18.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning Sony's strategy for licensing Digital Music Services, or the effect on Sony's revenues or business of its licenses with Digital Music Services.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony further objects to the request for all documents concerning licensing strategy or the effect on Sony’s revenues or business as vastly overbroad, vague and not reasonably limited to issues in this proceeding. There potentially are numerous documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. Sony also objects to the extent the request seeks information that may be difficult to locate. If the Services propose a reasonable limitation on this request, Sony will consider it.

**Document Request No. 19.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of YouTube or any other Interactive Streaming Service offering access to audiovisual recordings (e.g., VEVO, Vimeo) on Sony’s actual or projected revenues or otherwise on its business.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the request as vague and ambiguous. Without waiver of and subject to Sony’s general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 20.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of free or ad-supported Interactive Streaming Services offering access to audio recordings on Sony’s actual or projected revenues or otherwise on its business.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the request as vague and ambiguous. Without waiver of and

subject to Sony's general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 21.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any PSS on Sony's actual or projected revenues or otherwise on its business.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the request as vague and ambiguous. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 22.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any CABSAT on Sony's actual or projected revenues or otherwise on its business.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the request as vague and ambiguous.

Sony also objects to the request for this information as premature. The Participants have not yet submitted their written direct statements. Documents related to the effect of any CABSAT on Sony's actual or projected revenues or business may be relevant once the parties have submitted their written direct statements. Without waiver of and subject to Sony's general and specific objections, to the extent that such information becomes relevant, Sony will consider

searching for and producing non-privileged, responsive documents. Until that time, Sony does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 23.** All documents related to the potential entry of any Digital Music Service into the CABSAT market, including any documents relating to Sony's encouragement or facilitation of such market entry.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the request as vague and ambiguous.

Sony also objects to the request for this information as premature. The Participants have not yet submitted their written direct statements. Documents related to the potential entry of any digital music service into the CABSAT market may be relevant once the parties have submitted their written direct statements. Without waiver of and subject to Sony's general and specific objections, to the extent that such information becomes relevant, Sony will consider searching for and producing non-privileged, responsive documents. Until that time, Sony does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 24.** All documents related to the effect of statutory rates on license fees that Sony is able to obtain in direct license negotiations with Digital Music Services.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the request as vague and ambiguous. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 25.** All documents concerning the effect of statutory streaming royalties on Sony's investment in developing sound recordings.

**RESPONSE:** Sony objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. Sony also objects to the extent the request seeks information that may be difficult to locate. Sony further objects to the request as vague and ambiguous. Without waiver of and subject to Sony's general and specific objections, Sony will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 26.** Documents sufficient to evidence Sony's relative contribution, as defined in Section 801(b)(1)(c), with respect to cable radio, satellite radio, or otherwise to the offerings of Sirius XM, the PSS, or the CABSATs.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome and premature. Sony further objects to the request as vague and ambiguous. The parties have not yet submitted their written direct statements, and whether Sony will submit witness testimony related to Sony's relative contributions under Section 801(b)(1)(c) is undetermined at this time. If Sony does submit such testimony, then the Services can seek documents "directly related" to that testimony, to the extent Sony has any such documents, after the testimony has been submitted. Until that time, Sony does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 27.** All documents submitted by Sony to the Federal Trade Commission or European Commission in connection with the Universal/EMI merger, and any other submissions made to those or other government agencies by Sony, since the Universal/EMI merger, involving investigations related to competition among record companies or between record companies and other music distributors.

**RESPONSE:** Sony objects to the request as overbroad, unduly burdensome, oppressive harassing and not reasonably limited to the issues in this proceeding, to the extent it seeks "all" responsive documents, including documents submitted to agencies located outside the United

States. Sony objects to the request as overbroad, unduly burdensome, and oppressive, to the extent the request for “all” responsive documents will yield cumulative information. Sony objects to the request for “any submissions . . . involving investigations related to competition” between certain entities as overbroad, unduly burdensome, oppressive, harassing, vague, ambiguous and nonspecific. As to the request for documents submitted to the FTC or European Commission in connection with the Universal/EMI merger, if the Services propose a reasonable limitation on this request, Sony will consider it.

**Document Request No. 28.** Documents sufficient to show, for each year from 2013 to the present, the royalty rates and terms for any sound recording licenses, fees or tariffs, paid or payable by any cable radio, CABSAT or satellite radio service in each country outside the United States.

**RESPONSE:** Sony objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of information that would be extremely burdensome to collect, review and produce. The burden would far outweigh any alleged benefit.

Sony further objects to the request for this information as irrelevant and premature. In prior proceedings, neither Sony nor SoundExchange has proposed international rates and terms as benchmarks, and they currently have no plans to do so in this proceeding. Moreover, the Participants have not yet submitted their written direct statements or disclosed their benchmark agreements. Without waiver of and subject to Sony’s general and specific objections, to the extent that Sony or SoundExchange uses such documents as part of a benchmark in its written direct statement, Sony will consider searching for and producing responsive documents for certain relevant agreements. Until that time, Sony does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 29.** All communications related to Sirius XM’s use of Sony music and/or its direct license program, including without limitation emails, correspondence, draft press releases, and any joint representation or common interest agreements. The time period for this Request is from inception of the Sirius XM direct license program to the present.

**RESPONSE:** Sony objects to the request for “all” communications “related to Sirius XM’s use of Sony music” as overbroad, unduly burdensome, and vague and ambiguous, because it could encompass an extremely large volume of information from a large number of custodians, much of which would be irrelevant to the issues in this proceeding. Sony objects to the request for all communications related to Sirius XM’s “direct license” program on the same grounds. Sony objects to the request for any joint representation or common interest agreements related to Sirius XM’s use of Sony music or its direct license program as vague, ambiguous and irrelevant to the issues in this proceeding, and to the extent it seeks information that is privileged or otherwise protected from disclosure. Sony objects to the request for draft press releases as overbroad and unduly burdensome, and because final releases speak for themselves, rendering drafts irrelevant.

Sony further objects to the time period contemplated by this request as overbroad and unduly burdensome. Sony also objects to the request for this information as premature. The parties have not yet submitted their written direct statements, and whether Sony will submit witness testimony related to Sirius XM’s use of Sony’s music or Sirius XM’s direct license program is undetermined. If Sony does submit such testimony, then the Services can seek documents “directly related” to that testimony, to the extent Sony has any such documents, after the testimony has been submitted. Until that time, Sony does not agree to produce the requested information, if it has any.

**Document Request No. 30.** All public statements, remarks, testimony, speeches, including but not limited to Congressional testimony, declarations, affidavits, articles, tweets, or blog postings, made by or given by Sony or any officer, employee, or representative of Sony concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative

information and information that is trivial. Sony further objects to the request as overbroad, unduly burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to the issues in this proceeding. There potentially are numerous documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. If the Services propose a reasonable limitation on this request, Sony will consider it.

**Document Request No. 31.** All documents provided to (or prepared in anticipation of providing them to) the Securities and Exchange Commission, Congress, the Copyright Office, the Department of Justice or any other governmental agency concerning this rate proceeding, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive. Sony further objects to the request as overbroad, unduly burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to the issues in this proceeding. There are documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. If the Services propose a reasonable limitation on this request, Sony will consider it.

**Document Request No. 32.** All written and oral testimony and exhibits (in restricted/non-public form where applicable) submitted by any Sony witness in a prior Copyright Royalty Board proceeding or ASCAP or BMI rate court proceeding.

**RESPONSE:** Sony objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive because it is not reasonably limited to subject matters at issue in this proceeding. Testimony and exhibits from prior CRB, ASCAP or BMI rate court proceedings may have nothing to do with the issues in this proceeding. Sony also objects to the request for Restricted, confidential, or non-public information, to the extent the disclosure of such information is prohibited by protective orders entered in those other proceedings. If the Services propose a reasonable limitation on this request, Sony will consider it.

Respectfully submitted,

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*Counsel for Sony Music Entertainment*

Dated: July 25, 2016

**CERTIFICATE OF SERVICE**

I, Alex Trepp, do hereby certify that, on the 25<sup>th</sup> day of July, 2016, copies of the foregoing were sent via electronic mail to all parties at the email addresses listed below. Hard copies will follow by first class mail.

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*Counsel for SiriusXM Radio, Inc.*

Dated: July 25, 2016

/s/ Alex Trepp  
Alex Trepp



**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress**

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and "Preexisting"  
Subscription Services (SDARS III)

Docket No. 16-CRB-0001-SR/PSSR

(2018-2022)

**UMG's RESPONSES AND OBJECTIONS TO THE FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO UNIVERSAL MUSIC GROUP FROM SIRIUS  
XM, MUSIC CHOICE, AND MUZAK**

Universal Music Group ("UMG"), by its attorneys, hereby responds and objects to the First Set of Requests for Production of Documents to UMG from Sirius XM, Music Choice, and Muzak (the "Requests").

**GENERAL OBJECTIONS**

1. UMG objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon UMG requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, or any other applicable rule or order governing this proceeding, including applicable prior precedent.
2. UMG objects to the Requests, including all Definitions and Instructions, as premature to the extent that they purport to impose a duty on UMG to produce documents. While UMG is willing to make certain voluntary disclosures of information before it submits its written direct case, Congress contemplated that discovery in CRB royalty rate proceedings would commence after submission of the Participants' written direct statements and according to a schedule issued after the Copyright Royalty Judges considered the views of Participants in the proceeding. 17

U.S.C. § 803(b)(6)(C)(i), (ii). The CRB regulations likewise contemplate that a discovery schedule will issue after the Participants submit written direct statements and after the Copyright Royalty Judges have conferred with the Participants. 37 C.F.R. § 351.5(a). Any documents that UMG agrees to produce prior to the submission of its written direct statement will be produced on a voluntary basis. UMG reserves its rights to challenge the CRB's authority to require discovery prior to the submission of written direct statements.

3. UMG objects to the Requests, including all Definitions and Instructions, as premature because the parties have not yet submitted written direct statements. The Requests therefore seek documents that necessarily are not "directly related" to SoundExchange and/or UMG's written direct statement. *See* 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

4. UMG objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

5. UMG objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad, and/or unduly burdensome, and to the extent they would require UMG to spend an unreasonable amount of time, effort, and resources in order to respond.

6. UMG objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests or call for information that is publicly available and readily accessible. Such Requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

7. UMG objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product immunity doctrine, and any other applicable privilege or doctrine.

8. UMG objects to the Requests, including all Definitions and Instructions, to the extent any Request contains factually inaccurate information or statements, is argumentative, is predicated on erroneous assumptions or states legal conclusions. A statement herein that UMG will produce documents responsive to a Request does not indicate and should not be construed as meaning that UMG agrees, admits, or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, or that the documents are relevant and admissible.

9. UMG objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not in the possession, custody, or control of UMG, including documents from other parties.

10. UMG objects to the Requests, including all Definitions and Instructions, to the extent they seek documents from other proceedings. Such Requests are overbroad, harassing, and unduly burdensome. UMG further objects to such Requests to the extent they violate or are inconsistent with any statute, rule, order, or other authority governing the other proceeding, including applicable protective orders and prior precedent.

11. UMG objects to the Requests, including all Definitions and Instructions, to the extent they seek "all documents" of a certain nature, as vague, ambiguous, overbroad, and unduly burdensome.

12. UMG objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive, and harassing to the extent they seek the production of draft documents, which may be numerous and irrelevant to resolution of the issues in this proceeding.

13. UMG objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that do not exist or are not maintained in the ordinary course of business. UMG further objects to the Requests, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business.

14. UMG objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive and harassing, to the extent the Requests seek to impose an obligation to search for documents from every label with a larger record company.

15. By agreeing to search for and produce documents responsive to any particular Request, UMG does not represent that such documents exist or that they are in the possession, custody or control of UMG, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

16. UMG reserves any and all objections to the use or admissibility in any proceeding of any information, material, documents, or communications identified, produced or disclosed in response to the Requests.

17. UMG objects to the requested date of production as unduly burdensome, and providing insufficient time for UMG to locate responsive documents. If UMG agrees to produce documents, UMG will produce as set forth below and after conducting a reasonable search.

18. The responses and objections contained herein are made to the best of UMG's present knowledge, belief, and information, and are based on a reasonable, diligent, and ongoing search. UMG reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

#### **OBJECTIONS TO DEFINITIONS**

1. UMG objects to the definition of "Digital Music Service" in Definition No. 1 to the extent it purports to define the relevant universe of services as broadly as possible without limitation to issues that are relevant to this proceeding. To the extent the Requests purport to impose an obligation to produce documents related to the overbroad array of services described in the definition, including documents for services operating outside the United States, UMG objects to the definition as irrelevant, overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to subject matters at issue in this proceeding.

2. UMG objects to the definition of "Document" and "documents" in Definition No. 2 to the extent it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule, order, or precedent governing this proceeding, and to the extent it suggests that the Federal Rules of Civil Procedure govern discovery in this proceeding.

3. UMG objects to the definition of “Record Company” in Definition No. 6 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose an obligation to produce documents related to any record company that is not a Participant in this proceeding.

4. UMG objects to the definition of “UMG” in Definition No. 8 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including anyone acting on UMG’s behalf.

#### **OBJECTIONS TO INSTRUCTIONS**

1. UMG objects to the Instructions to the extent they seek to impose obligations that are inconsistent with or not supported by the governing statute or regulations.

2. UMG objects to Instruction No. 1 to the extent it is inconsistent with the requirements imposed by statute, regulations and the Court’s “Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order.”

3. UMG objects to Instruction No. 2 as overbroad, unduly burdensome, harassing, oppressive, and exceedingly vague to the extent that it seeks to impose an obligation to collect documents from an unreasonably wide array of people and entities, including “UMG’s attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with UMG.” There are numerous people and entities who might fit this description and the request to produce documents in the possession of any of them is egregiously overbroad.

4. UMG objects to Instruction No. 5's request for a privilege log, which purports to impose upon UMG requirements that exceed 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding. The governing statute and regulations do not provide for the exchange of privilege logs, and providing privilege logs would be extremely burdensome given the limited time for discovery in this proceeding. UMG will not produce a privilege log in connection with its production of documents.

5. UMG objects to Instruction No. 7 to the extent it seeks to impose an obligation to interpret language that is ambiguous.

6. UMG objects to Instruction No. 9 to the extent it seeks documents from time periods the Services themselves have deemed not reasonably related to the matters in this proceeding (i.e., time periods prior to January 1, 2013). Unless otherwise indicated in response to a specific Request, where UMG agrees to search for and produce documents, it will only search for and produce documents for the time period January 1, 2013 through the present.

#### **RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

Subject to and without waiving the foregoing objections, UMG sets forth below specific responses and objections to the Requests.

**Document Request No. 1.** All agreements executed or in effect between January 1, 2013 and the present between any Digital Music Service and UMG, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, renewed, adapted, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks "all"

responsive documents. UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to subject matters at issue in this proceeding, to the extent it seeks agreements with “any Digital Music Service.” As set forth in UMG’s Objections to Definitions above, “Digital Music Service” is defined too broadly and not reasonably limited to the issues in this proceeding.

Without waiver of and subject to UMG’s general and specific objections, UMG is conducting a reasonable and diligent search for and is producing interactive/on-demand webcasting, custom radio, non-interactive webcasting, and video agreements, plus any other agreements provided to UMG’s expert witnesses in this proceeding, including amendments, extensions and renewals, executed on or after January 1, 2013. If an agreement was amended, extended or renewed after that date, UMG is conducting a reasonable and diligent search for and producing the original agreement and the post-January 1, 2013 amendments, extensions and renewals.

**Document Request No. 2.** All agreements executed between January 1, 2013, and the present between any PSS and UMG, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, adapted, renewed, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks “all” responsive documents. UMG objects to this request from the PSS (Music Choice and Muzak) to produce their agreements with UMG, because such agreements are already in Music Choice and Muzak’s possession. It is harassing and unnecessary to ask UMG to produce Music Choice’s and Muzak’s agreements back to them.

Without waiver of and subject to UMG's general and specific objections, UMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 3.** All agreements executed between January 1, 2013, and the present in any other service category that UMG intends to use as a benchmark in this proceeding, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, renewed, adapted, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks "all" responsive documents. UMG objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Without waiver of and subject to UMG's general and specific objections, to the extent that UMG agreements are used by SoundExchange and/or UMG as part of a benchmark in SoundExchange and/or UMG's written direct statement, and to the extent requested documents have not already been produced, UMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 4.** To the extent not encompassed in Requests 1-3 above, Exhibit 7 to Aaron Harrison's written rebuttal testimony in the Web IV proceeding (and all agreement included therein), any subsequent modifications, extensions, and/or renewals of such agreements, and any new agreements with same counter-parties.

**RESPONSE:** UMG objects to this request for materials from a prior proceeding, which are governed by a protective order in that proceeding. UMG objects to the request as not reasonably limited to the issues in this proceeding. The referenced Exhibit contains numerous documents. To the extent the requested documents are not responsive to other document requests, and not relevant to this proceeding, UMG does not agree to produce the requested documents. Without waiver of and subject to UMG's general and specific objections, to the extent the requested

documents are responsive to Requests 1-3 above, and UMG agreed to produce them in response to those requests, UMG will produce the requested documents.

**Document Request No. 5.** For each agreement responsive to Requests 1-4 above, statements, payments, and/or play details sufficient to calculate effective rates for such services from January 1, 2013 to present.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. UMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce. UMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Information sufficient to calculate effective rates for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to UMG's general and specific objections, to the extent that UMG agreements are used by SoundExchange and/or UMG as part of a benchmark in SoundExchange and/or UMG's written direct statement, UMG will consider searching for and producing responsive documents for certain relevant agreements. Until that time, UMG does not agree to produce the requested information, if it has any.

**Document Request No. 6.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to the present (as specified by the agreement), documents sufficient to show:

- a. total payments collected from the service;
- b. revenue reported by the service (including the calculation of revenue base, if available);
- c. advances paid during the reporting period;

- d. number of subscribers during the reporting period, including the number of users of various service tiers (e.g., users of free tiers versus paid tiers);
- e. number of streams/plays during the reporting period;
- f. number of downloads, ringtones, ringbacks and/or mastertones sold during the reporting period;
- g. reported advertising and other ancillary revenue;
- h. the service retail price (including all tiers);
- i. UMG's pro rata share for any aspect of the service reported; and
- j. any other data reported to UMG (other than logs of specific songs streamed or downloaded).

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. UMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of detailed information that may be extremely burdensome to collect, review and produce. UMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to UMG's general and specific objections, to the extent that UMG agreements are used by SoundExchange and/or UMG as part of a benchmark in SoundExchange and/or UMG's written direct statement, UMG will consider searching for and producing responsive documents for certain relevant agreements. Until that time, UMG does not agree to produce the requested information, if it has any.

**Document Request No. 7.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to present (as specified by each agreement), all royalty statements or statements of account to UMG.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. UMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce.

UMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to UMG's general and specific objections, to the extent that UMG agreements are used by SoundExchange and/or UMG as part of a benchmark in SoundExchange and/or UMG's written direct statement, UMG will consider searching for and producing responsive documents for certain relevant agreements. Until that time, UMG does not agree to produce the requested information, if it has any.

**Document Request No. 8.** For any agreement that was entered into between a Record Company and any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for any agreement in a category that UMG and/or SoundExchange intends to present as a benchmark in this proceeding, (a) all drafts of such agreements and correspondence concerning such drafts, and (b) all documents, whether internal to the Record Company or between the Record Company and service, concerning the value of the agreement or any of its provisions to either the buyer/licensee or seller/licensor.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues or Participants in this proceeding, to the extent it seeks documents related to "any agreement" responsive to the request. UMG objects to this

request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the Participants in this proceeding, to the extent it seeks documents related to agreements between “a Record Company” and the specified digital music services. As set forth in UMG’s Objections to Definitions above, “Record Company” is defined too broadly and is not reasonably limited to the Participants in this proceeding. UMG further objects to this request to the extent it is duplicative of requests served on other Participants in this proceeding, to the extent it seeks documents not in the possession, custody or control of UMG, and to the extent it seeks documents from record companies that are not Participants or that do not supply a witness for this proceeding.

UMG also objects to this request because agreements speak for themselves and drafts are irrelevant to determining the rates and terms in the agreements themselves, absent ambiguity. UMG also objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it seeks drafts and correspondence for a large number of agreements. Such information would be extremely time-consuming to collect, review and produce, and the burden would far outweigh any alleged benefit.

UMG further objects to the request for valuation information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Valuation information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to UMG’s general and specific objections, to the extent that UMG agreements are used by SoundExchange and/or UMG as part of a benchmark in SoundExchange and/or UMG’s written direct statement, UMG will consider searching for and

producing non-privileged, responsive documents for certain relevant agreements. Until that time, UMG does not agree to produce the requested information, if it has any.

**Document Request No. 9.** For any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for services in any other category of service that UMG and/or SoundExchange intends to present as a benchmark in this proceeding, all analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the market characteristics for each service, including without limitation documents discussing, analyzing, or evidencing:

- a. the consumer demand, price at every level a price is charged, demand or price elasticities, and other characteristics of the Service;
- b. consumer usage of the Service;
- c. whether the Service may serve as a substitute for other Digital Music Services, terrestrial radio, sales of physical copies of sound recordings (e.g., CDs), sales of digital downloads, or for any other distribution channels for sound recordings;
- d. whether the Service promotes or otherwise increases the sale, distribution, or other licensed uses of sound recordings; and
- e. comparisons of the Service with satellite radio or any other Digital Music Service.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. UMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce.

UMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to UMG's general and specific objections, to the extent that UMG agreements are used by SoundExchange and/or UMG as part of a benchmark in SoundExchange and/or UMG's written direct statement, UMG will consider searching for and producing non-privileged, responsive documents for certain relevant agreements. Until that time, UMG does not agree to produce the requested information, if it has any.

**Document Request No. 10.** UMG's annual financial statements, whether audited or unaudited, at every level of specificity at which they are created or maintained, including without limitation cost and revenue breakdowns, digital and physical revenue and costs, and digital revenues reported by Digital Music Service category (e.g., non-interactive and custom radio or webcasting services, interactive or on-demand services, video services). For 2016, all available quarterly results should be produced.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information and to the extent it requests projections by categories, that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. UMG objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. UMG objects to this request to the extent it is predicated on erroneous assumptions about the way in which its financial information is organized and maintained. UMG's response should not be construed as meaning that UMG agrees, admits, or otherwise acknowledges that it maintains financial information in the requested categories.

UMG also objects to the request for this information as premature given that the parties have not yet submitted their written direct statements and UMG's financials may not be relevant to SoundExchange's or UMG's written direct statement. Without waiver of and subject to UMG's general and specific objections, UMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 11.** Documents sufficient to show UMG's projected revenue, costs and expenses by category over the 2016-2022 licensing period.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests projections by categories that may not be maintained in the ordinary course of business or that may be burdensome to collect, review and produce. UMG objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. UMG objects to this request to the extent it is predicated on erroneous assumptions about the way in which its financial information is organized and maintained. UMG's response should not be construed as meaning that UMG agrees, admits, or otherwise acknowledges that it maintains the requested projections for this time period. UMG further objects to the use of the phrase "by category" as vague and ambiguous as it is used in this request.

UMG also objects to the request for this information as premature given that the parties have not yet submitted their written direct statements and UMG's financials may not be relevant to SoundExchange's or UMG's written direct statement. Without waiver of and subject to UMG's general and specific objections, UMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 12.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. the promotional value and/or substitutional effect of Sirius XM or any PSS on sales, subscriptions to other Digital Music Services, or other sources of revenue;
- b. any substitution between Digital Music Services (including Sirius XM or any PSS) and sales, subscriptions, and radio;
- c. the relative elasticities of demand across different Digital Music Services at both the licensing and consumer sales/use level;

- d. customer preferences related to lean-back or lean-forward experiences or services;
- e. listening of on-demand service users to non-on-demand service features and modes of listening (e.g., non-interactive listening features, playlists);
- f. any purported shift from music ownership to access; and
- g. listening of subscribers to Sirius XM or any PSS.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. Without waiver of and subject to UMG’s general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 13.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the ability of any Digital Music Service to “steer” plays toward or away from particular Record Companies, or to steer listening more generally.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG objects to the extent the request seeks information that may be difficult to locate. UMG objects to the request for documents concerning “the ability of any Digital Music Service . . . to steer listening more generally” as overbroad, unduly burdensome, oppressive and harassing to the extent it is vague, ambiguous, and not reasonably limited to the issues in this proceeding. Without waiver of and subject to UMG’s general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 14.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the relative value of the programming of music versus the music itself to consumers of any Digital Music Service.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the comparison contemplated by this request as vague and ambiguous. Without waiver of and subject to UMG’s general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 15.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents addressing and/or quantifying the degree to which plays on on-demand or interactive services (whether in general or particular) are from playlists programmed by the service, from playlists programmed by users of the service or other third-parties, or reflect songs chosen specifically by the user for on-demand listening.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to UMG’s general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 16.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning whether users of interactive services desire features that editorialize, curate, or recommend music, or that such users want to listen to service-programmed plays, including any data, communications or other information regarding the share of programmed plays on such services and (or as compared to ) the share of user-selected plays on such services (including without limitation Spotify, Rdio, Rhapsody, Google Play All Access, Amazon Prime, and Slacker).

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to UMG’s general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 17.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. a digital distribution or licensing strategy;
- b. the role of promotion and/or substitution in the licensing strategy; and
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service or terrestrial radio on other sources of revenue.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG further objects to the request for all documents concerning digital distribution or licensing strategy as vastly overbroad, vague and not reasonably limited to issues in this proceeding. There potentially are numerous documents concerning digital distribution or licensing strategy that have absolutely nothing to do with any of the issues in this proceeding. UMG also objects to the extent the request seeks information that may be difficult to locate. Without waiver of and subject to UMG’s general and specific objections, UMG will search for and produce non-privileged documents responsive to parts (b) and (c) of this request, if any, that can be located after a reasonable and diligent search.

**Document Request No. 18.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning UMG's strategy for licensing Digital Music Services, or the effect on UMG's revenues or business of its licenses with Digital Music Services.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG further objects to the request for all documents concerning licensing strategy or the effect on UMG's revenues or business as vastly overbroad, vague and not reasonably limited to issues in this proceeding. There potentially are numerous documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. UMG also objects to the extent the request seeks information that may be difficult to locate. If the Services propose a reasonable limitation on this request, UMG will consider it.

**Document Request No. 19.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of YouTube or any other Interactive Streaming Service offering access to audiovisual recordings (e.g., VEVO, Vimeo) on UMG's actual or projected revenues or otherwise on its business.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the request as vague and ambiguous. Without waiver of and subject to UMG's general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 20.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of free or ad-supported Interactive Streaming Services offering access to audio recordings on UMG's actual or projected revenues or otherwise on its business.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the request as vague and ambiguous. Without waiver of and subject to UMG's general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 21.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any PSS on UMG's actual or projected revenues or otherwise on its business.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the request as vague and ambiguous. Without waiver of and subject to UMG's general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 22.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any CABSAT on UMG's actual or projected revenues or otherwise on its business.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the request as vague and ambiguous.

UMG objects to the request for this information as premature. The Participants have not yet submitted their written direct statements. Documents related to the effect of any CABSAT

on UMG's actual or projected revenues or business may be relevant once the parties have submitted their written direct statements. Without waiver of and subject to UMG's general and specific objections, to the extent that such information becomes relevant, UMG will consider searching for and producing non-privileged, responsive documents. Until that time, UMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 23.** All documents related to the potential entry of any Digital Music Service into the CABSAT market, including any documents relating to UMG's encouragement or facilitation of such market entry.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the request as vague and ambiguous.

UMG also objects to the request for this information as premature. The Participants have not yet submitted their written direct statements. Documents related to the potential entry of any digital music service into the CABSAT market may be relevant once the parties have submitted their written direct statements. Without waiver of and subject to UMG's general and specific objections, to the extent that such information becomes relevant, UMG will consider searching for and producing non-privileged, responsive documents. Until that time, UMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 24.** All documents related to the effect of statutory rates on license fees that UMG is able to obtain in direct license negotiations with Digital Music Services.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the request as vague and ambiguous. Without waiver of and

subject to UMG's general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 25.** All documents concerning the effect of statutory streaming royalties on UMG's investment in developing sound recordings.

**RESPONSE:** UMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. UMG also objects to the extent the request seeks information that may be difficult to locate. UMG further objects to the request as vague and ambiguous. Without waiver of and subject to UMG's general and specific objections, UMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 26.** Documents sufficient to evidence UMG's relative contribution, as defined in Section 801(b)(1)(c), with respect to cable radio, satellite radio, or otherwise to the offerings of Sirius XM, the PSS, or the CABSATs.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome and premature. UMG further objects to the request as vague and ambiguous. The parties have not yet submitted their written direct statements, and whether UMG will submit witness testimony related to UMG's relative contributions under Section 801(b)(1)(c) is undetermined at this time. If UMG does submit such testimony, then the Services can seek documents "directly related" to that testimony, to the extent UMG has any such documents, after the testimony has been submitted. Until that time, UMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 27.** All documents submitted by UMG to the Federal Trade Commission or European Commission in connection with the Universal/EMI merger, and any other submissions made to those or other government agencies by UMG, since the

Universal/EMI merger, involving investigations related to competition among record companies or between record companies and other music distributors.

**RESPONSE:** UMG objects to the request as overbroad, unduly burdensome, oppressive harassing and not reasonably limited to the issues in this proceeding to the extent it seeks “all” responsive documents, including documents submitted to agencies located outside the United States. UMG objects to the request as overbroad, unduly burdensome, and oppressive, to the extent the request for “all” responsive documents will yield cumulative information. UMG objects to the request for “any submissions . . . involving investigations related to competition” between certain entities as overbroad, unduly burdensome, oppressive, harassing, vague, ambiguous and nonspecific. As to the request for documents submitted to the FTC or European Commission in connection with the Universal/EMI merger, if the Services propose a reasonable limitation on this request, UMG will consider it.

**Document Request No. 28.** Documents sufficient to show, for each year from 2013 to the present, the royalty rates and terms for any sound recording licenses, fees or tariffs, paid or payable by any cable radio, CABSAT or satellite radio service in each country outside the United States.

**RESPONSE:** UMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of information that would be extremely burdensome to collect, review and produce. The burden would far outweigh any alleged benefit. UMG further objects to the request for this information as irrelevant and premature. In prior proceedings, neither UMG nor SoundExchange has proposed international rates and terms as benchmarks, and they currently have no plans to do so in this proceeding. Moreover, the Participants have not yet submitted their written direct statements or disclosed their benchmark agreements.

Without waiver of and subject to UMG's general and specific objections, to the extent that UMG or SoundExchange uses such documents as part of a benchmark in its written direct statement, UMG will consider searching for and producing responsive documents for certain relevant agreements. Until that time, UMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 29.** All communications related to Sirius XM's use of UMG music and/or its direct license program, including without limitation emails, correspondence, draft press releases, and any joint representation or common interest agreements. The time period for this Request is from inception of the Sirius XM direct license program to the present.

**RESPONSE:** UMG objects to the request for "all" communications "related to Sirius XM's use of UMG music" as overbroad, unduly burdensome, and vague and ambiguous, because it could encompass an extremely large volume of information from a large number of custodians, much of which would be irrelevant to the issues in this proceeding. UMG objects to the request for all communications related to Sirius XM's "direct license" program on the same grounds. UMG objects to the request for any joint representation or common interest agreements related to Sirius XM's use of UMG music or its direct license program as vague, ambiguous and irrelevant to the issues in this proceeding and to the extent it seeks information that is privileged or otherwise protected from disclosure. UMG objects to the request for draft press releases as overbroad and unduly burdensome, and because final releases speak for themselves, rendering drafts irrelevant. UMG further objects to the time period contemplated by this request as overbroad and unduly burdensome.

UMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements, and whether UMG will submit witness testimony related to Sirius XM's use of UMG's music or Sirius XM's direct license program is undetermined. If UMG does submit such testimony, then the Services can seek documents

“directly related” to that testimony, to the extent UMG has any such documents, after the testimony has been submitted. Until that time, UMG does not agree to produce the requested information, if it has any.

**Document Request No. 30.** All public statements, remarks, testimony, speeches, including but not limited to Congressional testimony, declarations, affidavits, articles, tweets, or blog postings, made by or given by Sony [sic] or any officer, employee, or representative of Sony [sic] concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information and information that is trivial. UMG further objects to the request as overbroad, unduly burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to the issues in this proceeding. There potentially are numerous documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. If the Services propose a reasonable limitation on this request, UMG will consider it.

**Document Request No. 31.** All documents provided to (or prepared in anticipation of providing them to) the Securities and Exchange Commission, Congress, the Copyright Office, the Department of Justice, or any other governmental agency concerning this rate proceeding, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive. UMG further objects to the request as overbroad, unduly burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to the issues in this proceeding. There are documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. If the Services propose a reasonable limitation on this request, UMG will consider it.

**Document Request No. 32.** All written and oral testimony and exhibits (in restricted/non-public form where applicable) submitted by any UMG witness in a prior Copyright Royalty Board proceeding or ASCAP or BMI rate court proceeding.

**RESPONSE:** UMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive because it is not reasonably limited to subject matters at issue in this proceeding. Testimony and exhibits from prior CRB, ASCAP or BMI rate court proceedings may have nothing to do with the issues in this proceeding. UMG also objects to the request for Restricted, confidential, or non-public information, to the extent the disclosure of such information is prohibited by protective orders entered in those other proceedings. If the Services propose a reasonable limitation on this request, UMG will consider it.

Respectfully submitted,

By /s/ Jared O. Freedman  
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Dated: July 25, 2016

**CERTIFICATE OF SERVICE**

I, Alex Trepp, do hereby certify that, on the 25<sup>th</sup> day of July, 2016, copies of the foregoing were sent via electronic mail to all parties at the email addresses listed below. Hard copies will follow by first class mail.

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Dated: July 25, 2016

/s/ Alex Trepp  
Alex Trepp



**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress**

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and “Preexisting”  
Subscription Services (SDARS III)

Docket No. 16–CRB–0001–SR/PSSR

(2018–2022)

**WARNER’S RESPONSES AND OBJECTIONS TO THE FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO WARNER MUSIC GROUP FROM SIRIUS  
XM, MUSIC CHOICE, AND MUZAK**

Warner Music Group (“WMG”), by its attorneys, hereby responds and objects to the First Set of Requests for Production of Documents to WMG from Sirius XM, Music Choice, and Muzak (the “Requests”).

**GENERAL OBJECTIONS**

1. WMG objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon WMG requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, or any other applicable rule or order governing this proceeding, including applicable prior precedent.
2. WMG objects to the Requests, including all Definitions and Instructions, as premature to the extent that they purport to impose a duty on WMG to produce documents. While WMG is willing to make certain voluntary disclosures of information before it submits its written direct case, Congress contemplated that discovery in CRB royalty rate proceedings would commence after submission of the Participants’ written direct statements and according to a schedule issued

after the Copyright Royalty Judges considered the views of Participants in the proceeding. 17 U.S.C. § 803(b)(6)(C)(i), (ii). The CRB regulations likewise contemplate that a discovery schedule will issue after the Participants submit written direct statements and after the Copyright Royalty Judges have conferred with the Participants. 37 C.F.R. § 351.5(a). Any documents that WMG agrees to produce prior to the submission of its written direct statement will be produced on a voluntary basis. WMG reserves its rights to challenge the CRB's authority to require discovery prior to the submission of written direct statements.

3. WMG objects to the Requests, including all Definitions and Instructions, as premature because the parties have not yet submitted written direct statements. The Requests therefore seek documents that necessarily are not "directly related" to SoundExchange and/or WMG's written direct statement. *See* 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

4. WMG objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

5. WMG objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad, and/or unduly burdensome, and to the extent they would require WMG to spend an unreasonable amount of time, effort, and resources in order to respond.

6. WMG objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests or call for information that is publicly available and readily accessible. Such Requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

7. WMG objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product immunity doctrine, and any other applicable privilege or doctrine.

8. WMG objects to the Requests, including all Definitions and Instructions, to the extent any Request contains factually inaccurate information or statements, is argumentative, is predicated on erroneous assumptions or states legal conclusions. A statement herein that WMG will produce documents responsive to a Request does not indicate and should not be construed as meaning that WMG agrees, admits, or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, or that the documents are relevant and admissible.

9. WMG objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not in the possession, custody, or control of WMG, including documents from other parties.

10. WMG objects to the Requests, including all Definitions and Instructions, to the extent they seek documents from other proceedings. Such Requests are overbroad, harassing, and unduly burdensome. WMG further objects to such Requests to the extent they violate or are inconsistent with any statute, rule, order, or other authority governing the other proceeding, including applicable protective orders and prior precedent.

11. WMG objects to the Requests, including all Definitions and Instructions, to the extent they seek “all documents” of a certain nature, as vague, ambiguous, overbroad, and unduly burdensome.

12. WMG objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive, and harassing to the extent they seek the production of draft documents, which may be numerous and irrelevant to resolution of the issues in this proceeding.

13. WMG objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that do not exist or are not maintained in the ordinary course of business. WMG further objects to the Requests, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business.

14. WMG objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive and harassing, to the extent the Requests seek to impose an obligation to search for documents from every label with a larger record company.

15. By agreeing to search for and produce documents responsive to any particular Request, WMG does not represent that such documents exist or that they are in the possession, custody or control of WMG, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

16. WMG reserves any and all objections to the use or admissibility in any proceeding of any information, material, documents, or communications identified, produced or disclosed in response to the Requests.

17. WMG objects to the requested date of production as unduly burdensome, and providing insufficient time for WMG to locate responsive documents. If WMG agrees to produce documents, WMG will produce documents as set forth below and after conducting a reasonable search.

18. The responses and objections contained herein are made to the best of WMG's present knowledge, belief, and information, and are based on a reasonable, diligent, and ongoing search. WMG reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

#### **OBJECTIONS TO DEFINITIONS**

1. WMG objects to the definition of "Digital Music Service" in Definition No. 1 to the extent it purports to define the relevant universe of services as broadly as possible without limitation to issues that are relevant to this proceeding. To the extent the Requests purport to impose an obligation to produce documents related to the overbroad array of services described in the definition, including documents for services operating outside the United States, WMG objects to the definition as irrelevant, overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding.

2. WMG objects to the definition of "Document" and "documents" in Definition No. 2 to the extent it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule, order or precedent governing this proceeding, and to the extent it suggests that the Federal Rules of Civil Procedure govern discovery in this proceeding.

3. WMG objects to the definition of “Record Company” in Definition No. 6 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose an obligation to produce documents related to any record company that is not a participant in this proceeding.

4. WMG objects to the definition of “WMG” in Definition No. 8 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including anyone acting on WMG’s behalf.

#### **OBJECTIONS TO INSTRUCTIONS**

1. WMG objects to the Instructions to the extent they seek to impose obligations that are inconsistent with or not supported by the governing statute or regulations.

2. WMG objects to Instruction No. 1 to the extent it is inconsistent with the requirements imposed by statute, regulations and the Court’s “Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order.”

3. WMG objects to Instruction No. 2 as overbroad, unduly burdensome, harassing, oppressive, and exceedingly vague to the extent that it seeks to impose an obligation to collect documents from an unreasonably wide array of people and entities, including “WMG’s attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with WMG.” There are numerous people and entities who might fit this description and the request to produce documents in the possession of any of them is egregiously overbroad.

4. WMG objects to Instruction No. 5's request for a privilege log, which purports to impose upon WMG requirements that exceed 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding. The governing statute and regulations do not provide for the exchange of privilege logs, and providing privilege logs would be extremely burdensome given the limited time for discovery in this proceeding. WMG will not produce a privilege log in connection with its production of documents.

5. WMG objects to Instruction No. 7 to the extent it seeks to impose an obligation to interpret language that is ambiguous.

6. WMG objects to Instruction No. 9 to the extent it seeks documents from time periods the Services themselves have deemed not reasonably related to the matters in this proceeding (i.e., time periods prior to January 1, 2013). Unless otherwise indicated in response to a specific Request, where WMG agrees to search for and produce documents, it will only search for and produce documents for the time period January 1, 2013 through the present.

#### **RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

Subject to and without waiving the foregoing objections, WMG sets forth below specific responses and objections to the Requests.

**Document Request No. 1.** All agreements executed or in effect between January 1, 2013 and the present between any Digital Music Service and Warner, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, renewed, adapted, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks "all" responsive documents. WMG objects to this request as overbroad, unduly burdensome,

oppressive, harassing, and not reasonably limited to subject matters at issue in this proceeding, to the extent it seeks agreements with “any Digital Music Service.” As set forth in WMG’s Objections to Definitions above, “Digital Music Service” is defined too broadly and not reasonably limited to the issues in this proceeding.

Without waiver of and subject to WMG’s general and specific objections, WMG is conducting a reasonable and diligent search for and is producing interactive/on-demand webcasting, custom radio, non-interactive webcasting, and video agreements, plus any other agreements provided to WMG’s expert witnesses in this proceeding, including amendments, extensions and renewals, executed on or after January 1, 2013. If an agreement was amended, extended or renewed after that date, WMG is conducting a reasonable and diligent search for and producing the original agreement and the post-January 1, 2013 amendments, extensions and renewals.

**Document Request No. 2.** All agreements executed between January 1, 2013, and the present between any PSS and Warner, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, adapted, renewed, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks “all” responsive documents. WMG objects to this request from the PSS (Music Choice and Muzak) to produce their agreements with WMG, because such agreements are already in Music Choice and Muzak’s possession. It is harassing and unnecessary to ask WMG to produce Music Choice’s and Muzak’s agreements back to them.

Without waiver of and subject to WMG's general and specific objections, WMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 3.** All agreements executed between January 1, 2013, and the present in any other service category that Warner intends to use as a benchmark in this proceeding, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, renewed, adapted, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding, to the extent it seeks "all" responsive documents. WMG objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Without waiver of and subject to WMG's general and specific objections, to the extent that WMG agreements are used by SoundExchange and/or WMG as part of a benchmark in SoundExchange and/or WMG's written direct statement, and to the extent requested documents have not already been produced, WMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 4.** To the extent not encompassed in Requests 1-3 above, Exhibit 12 to Ron Wilcox's written rebuttal testimony in the Web IV proceeding (and all agreement included therein), any subsequent modifications, extensions, and/or renewals of such agreements, and any new agreements with same counter-parties.

**RESPONSE:** WMG objects to this request for materials from a prior proceeding, which are governed by a protective order in that proceeding. WMG objects to the request as not reasonably limited to the issues in this proceeding. The referenced Exhibit contains numerous documents. To the extent the requested documents are not responsive to other document requests, and not

relevant to this proceeding, WMG does not agree to produce the requested documents. Without waiver of and subject to WMG's general and specific objections, to the extent the requested documents are responsive to Requests 1-3 above, and WMG agreed to produce them in response to those requests, WMG will produce the requested documents.

**Document Request No. 5.** For each agreement responsive to Requests 1-4 above, statements, payments, and/or play details sufficient to calculate effective rates for such services from January 1, 2013 to present.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. WMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce. WMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Information sufficient to calculate effective rates for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to WMG's general and specific objections, to the extent that WMG agreements are used by SoundExchange and/or WMG as part of a benchmark in SoundExchange and/or WMG's written direct statement, WMG will consider searching for and producing responsive documents for certain relevant agreements. Until that time, WMG does not agree to produce the requested information, if it has any.

**Document Request No. 6.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to the present (as specified by the agreement), documents sufficient to show:

- a. total payments collected from the service;

- b. revenue reported by the service (including the calculation of revenue base, if available);
- c. advances paid during the reporting period;
- d. number of subscribers during the reporting period, including the number of users of various service tiers (e.g., users of free tiers versus paid tiers);
- e. number of streams/plays during the reporting period;
- f. number of downloads, ringtones, ringbacks and/or mastertones sold during the reporting period;
- g. reported advertising and other ancillary revenue;
- h. the service retail price (including all tiers);
- i. Warner's pro rata share for any aspect of the service reported; and
- j. any other data reported to Warner (other than logs of specific songs streamed or downloaded).

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. WMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of detailed information that may be extremely burdensome to collect, review and produce.

WMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to WMG's general and specific objections, to the extent that WMG agreements are used by SoundExchange and/or WMG as part of a benchmark in SoundExchange and/or WMG's written direct statement, WMG will consider searching for and

producing responsive documents for certain relevant agreements. Until that time, WMG does not agree to produce the requested information, if it has any.

**Document Request No. 7.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to present (as specified by each agreement), all royalty statements or statements of account to Warner.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. WMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce.

WMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to WMG's general and specific objections, to the extent that WMG agreements are used by SoundExchange and/or WMG as part of a benchmark in SoundExchange and/or WMG's written direct statement, WMG consider searching for and producing responsive documents for certain relevant agreements. Until that time, WMG does not agree to produce the requested information, if it has any.

**Document Request No. 8.** For any agreement that was entered into between a Record Company and any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for any agreement in a category that Warner and/or SoundExchange intends to present as a benchmark in this proceeding, (a) all drafts of such agreements and correspondence concerning such drafts, and (b) all documents, whether internal to the Record Company or between the Record Company and service, concerning the value of the agreement or any of its provisions to either the buyer/licensee or seller/licensor.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues or Participants in this proceeding, to the extent it seeks documents related to “any agreement” responsive to the request. WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the Participants in this proceeding, to the extent it seeks documents related to agreements between “a Record Company” and the specified digital music services. As set forth in WMG’s Objections to Definitions above, “Record Company” is defined too broadly and is not reasonably limited to the Participants in this proceeding. WMG further objects to this request to the extent it is duplicative of requests served on other Participants in this proceeding, to the extent it seeks documents not in the possession, custody or control of WMG, and to the extent it seeks documents from record companies that are not Participants or that do not supply a witness for this proceeding.

WMG also objects to this request because agreements speak for themselves and drafts are irrelevant to determining the rates and terms in the agreements themselves, absent ambiguity. WMG also objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it seeks drafts and correspondence for a large number of agreements. Such information would be extremely time-consuming to collect, review and produce, and the burden would far outweigh any alleged benefit. WMG further objects to the request for valuation information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Valuation information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements. Without waiver of and subject to WMG’s general and specific objections, to the extent that WMG agreements are used by SoundExchange and/or

WMG as part of a benchmark in SoundExchange and/or WMG's written direct statement, WMG will consider searching for and producing non-privileged, responsive documents for certain relevant agreements. Until that time, WMG does not agree to produce the requested information, if it has any.

**Document Request No. 9.** For any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for services in any other category of service that Warner and/or SoundExchange intends to present as a benchmark in this proceeding, all analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the market characteristics for each service, including without limitation documents discussing, analyzing, or evidencing:

- a. the consumer demand, price at every level a price is charged, demand or price elasticities, and other characteristics of the Service;
- b. consumer usage of the Service;
- c. whether the Service may serve as a substitute for other Digital Music Services, terrestrial radio, sales of physical copies of sound recordings (e.g., CDs), sales of digital downloads, or for any other distribution channels for sound recordings;
- d. whether the Service promotes or otherwise increases the sale, distribution, or other licensed uses of sound recordings; and
- e. comparisons of the Service with satellite radio or any other Digital Music Service.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it relates to all agreements responsive to the prior requests. WMG objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce.

WMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to WMG's general and specific objections, to the extent that WMG agreements are used by SoundExchange and/or WMG as part of a benchmark in SoundExchange and/or WMG's written direct statement, WMG will consider searching for and producing non-privileged, responsive documents for certain relevant agreements. Until that time, WMG does not agree to produce the requested information, if it has any.

**Document Request No. 10.** Warner's annual financial statements, whether audited or unaudited, at every level of specificity at which they are created or maintained, including without limitation cost and revenue breakdowns, digital and physical revenue and costs, and digital revenues reported by Digital Music Service category (e.g., non-interactive and custom radio or webcasting services, interactive or on-demand services, video services). For 2016, all available quarterly results should be produced.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information and to the extent it requests projections by categories, that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. WMG objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. WMG objects to this request to the extent it is predicated on erroneous assumptions about the way in which its financial information is organized and maintained. WMG's response should not be construed as meaning that WMG agrees, admits, or otherwise acknowledges that it maintains financial information in the requested categories.

WMG also objects to the request for this information as premature given that the parties have not yet submitted their written direct statements and WMG's financials may not be relevant to SoundExchange's or WMG's written direct statement. Without waiver of and subject to WMG's general and specific objections, WMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 11.** Documents sufficient to show Warner's projected revenue, costs and expenses by category over the 2016-2022 licensing period.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests projections by categories that may not be maintained in the ordinary course of business or that may be burdensome to collect, review and produce. WMG objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. WMG objects to this request to the extent it is predicated on erroneous assumptions about the way in which its financial information is organized and maintained. WMG's response should not be construed as meaning that WMG agrees, admits, or otherwise acknowledges that it maintains the requested projections for this time period. WMG further objects to the use of the phrase "by category" as vague and ambiguous as it is used in this request.

WMG also objects to the request for this information as premature given that the parties have not yet submitted their written direct statements and WMG's financials may not be relevant to SoundExchange's or WMG's written direct statement. Without waiver of and subject to WMG's general and specific objections, WMG will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 12.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. the promotional value and/or substitutional effect of Sirius XM or any PSS on sales, subscriptions to other Digital Music Services, or other sources of revenue;
- b. any substitution between Digital Music Services (including Sirius XM or any PSS) and sales, subscriptions, and radio;
- c. the relative elasticities of demand across different Digital Music Services at both the licensing and consumer sales/use level;

- d. customer preferences related to lean-back or lean-forward experiences or services;
- e. listening of on-demand service users to non-on-demand service features and modes of listening (e.g., non-interactive listening features, playlists);
- f. any purported shift from music ownership to access; and
- g. listening of subscribers to Sirius XM or any PSS.

**RESPONSE:** WMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG also objects to the extent the request seeks information that may be difficult to locate.

Without waiver of and subject to WMG’s general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 13.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the ability of any Digital Music Service to “steer” plays toward or away from particular Record Companies, or to steer listening more generally.

**RESPONSE:** WMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG objects to the extent the request seeks information that may be difficult to locate. WMG objects to the request for documents concerning “the ability of any Digital Music Service . . . to steer listening more generally” as overbroad, unduly burdensome, oppressive and harassing, to the extent it is vague, ambiguous, and not reasonably limited to the issues in this proceeding.

Without waiver of and subject to WMG’s general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 14.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the relative value of the programming of music versus the music itself to consumers of any Digital Music Service.

**RESPONSE:** WMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG also objects to the extent the request seeks information that may be difficult to locate.

WMG further objects to the comparison contemplated by this request as vague and ambiguous.

Without waiver of and subject to WMG’s general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 15.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents addressing and/or quantifying the degree to which plays on on-demand or interactive services (whether in general or particular) are from playlists programmed by the service, from playlists programmed by users of the service or other third-parties, or reflect songs chosen specifically by the user for on-demand listening.

**RESPONSE:** WMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG also objects to the extent the request seeks information that may be difficult to locate.

WMG further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to WMG’s general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 16.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning whether users of interactive services desire features that editorialize, curate, or recommend music, or that such users want to listen to service- programmed plays, including any data, communications or other information regarding the share of programmed plays on such services and (or as compared to ) the share of user-selected plays on such services (including without limitation Spotify, Rdio, Rhapsody, Google Play All Access, Amazon Prime, and Slacker).

**RESPONSE:** WMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG also objects to the extent the request seeks information that may be difficult to locate.

WMG further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to WMG’s general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 17.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. a digital distribution or licensing strategy;
- b. the role of promotion and/or substitution in the licensing strategy; and
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service or terrestrial radio on other sources of revenue.

**RESPONSE:** WMG objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG further objects to the request for all documents concerning digital distribution or licensing strategy as vastly overbroad, vague and not reasonably limited to issues in this proceeding.

There potentially are numerous documents concerning digital distribution or licensing strategy that have absolutely nothing to do with any of the issues in this proceeding. WMG also objects to the extent the request seeks information that may be difficult to locate. Without waiver of and subject to WMG’s general and specific objections, WMG will search for and produce non-privileged documents responsive to parts (b) and (c) of this request, if any, that can be located after a reasonable and diligent search.

**Document Request No. 18.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning Warner's strategy for licensing Digital Music Services, or the effect on Warner's revenues or business of its licenses with Digital Music Services.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG further objects to the request for all documents concerning licensing strategy or the effect on WMG's revenues or business as vastly overbroad, vague and not reasonably limited to issues in this proceeding. There potentially are numerous documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. WMG also objects to the extent the request seeks information that may be difficult to locate. If the Services propose a reasonable limitation on this request, WMG will consider it.

**Document Request No. 19.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of YouTube or any other Interactive Streaming Service offering access to audiovisual recordings (e.g., VEVO, Vimeo) on Warner's actual or projected revenues or otherwise on its business.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG also objects to the extent the request seeks information that may be difficult to locate.

WMG further objects to the request as vague and ambiguous. Without waiver of and subject to

WMG's general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 20.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of free or ad-supported Interactive Streaming Services offering access to audio recordings on Warner's actual or projected revenues or otherwise on its business.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. WMG also objects to the extent the request seeks information that may be difficult to locate. WMG further objects to the request as vague and ambiguous. Without waiver of and subject to WMG's general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 21.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any PSS on Warner's actual or projected revenues or otherwise on its business.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. WMG also objects to the extent the request seeks information that may be difficult to locate. WMG further objects to the request as vague and ambiguous. Without waiver of and subject to WMG's general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 22.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any CABSAT on Warner's actual or projected revenues or otherwise on its business.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. WMG also objects to the extent the request seeks information that may be difficult to locate. WMG further objects to the request as vague and ambiguous.

WMG objects to the request for this information as premature. The Participants have not yet submitted their written direct statements. Documents related to the effect of any CABSAT on WMG's actual or projected revenues or business may be relevant once the parties have

submitted their written direct statements. Without waiver of and subject to WMG's general and specific objections, to the extent that such information becomes relevant, WMG will consider searching for and producing non-privileged, responsive documents. Until that time, WMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 23.** All documents related to the potential entry of any Digital Music Service into the CABSAT market, including any documents relating to Warner's encouragement or facilitation of such market entry.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG also objects to the extent the request seeks information that may be difficult to locate.

WMG further objects to the request as vague and ambiguous.

WMG also objects to the request for this information as premature. The Participants have not yet submitted their written direct statements. Documents related to the potential entry of any digital music service into the CABSAT market may be relevant once the parties have submitted their written direct statements. Without waiver of and subject to WMG's general and specific objections, to the extent that such information becomes relevant, WMG will consider searching for and producing non-privileged, responsive documents. Until that time, WMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 24.** All documents related to the effect of statutory rates on license fees that Warner is able to obtain in direct license negotiations with Digital Music Services.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

WMG also objects to the extent the request seeks information that may be difficult to locate.

WMG further objects to the request as vague and ambiguous. Without waiver of and subject to

WMG's general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 25.** All documents concerning the effect of statutory streaming royalties on Warner's investment in developing sound recordings.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. WMG also objects to the extent the request seeks information that may be difficult to locate. WMG further objects to the request as vague and ambiguous. Without waiver of and subject to WMG's general and specific objections, WMG will search for and produce non-privileged, responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request No. 26.** Documents sufficient to evidence Warner's relative contribution, as defined in Section 801(b)(1)(c), with respect to cable radio, satellite radio, or otherwise to the offerings of Sirius XM, the PSS, or the CABSATs.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome and premature. WMG further objects to the request as vague and ambiguous. The parties have not yet submitted their written direct statements, and whether WMG will submit witness testimony related to WMG's relative contributions under Section 801(b)(1)(c) is undetermined at this time. If WMG does submit such testimony, then the Services can seek documents "directly related" to that testimony, to the extent WMG has any such documents, after the testimony has been submitted. Until that time, WMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 27.** All documents submitted by Warner to the Federal Trade Commission or European Commission in connection with the Universal/EMI merger, and any other submissions made to those or other government agencies by Warner, since the Universal/EMI merger, involving investigations related to competition among record companies or between record companies and other music distributors.

**RESPONSE:** WMG objects to the request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding to the extent it seeks “all” responsive documents, including documents submitted to agencies located outside the United States. WMG objects to the request as overbroad, unduly burdensome and oppressive, to the extent the request for “all” responsive documents will yield cumulative information. WMG objects to the request for “any submissions . . . involving investigations related to competition” between certain entities as overbroad, unduly burdensome, oppressive, harassing, vague, ambiguous and nonspecific. As to the request for documents submitted to the FTC or European Commission in connection with the Universal/EMI merger, if the Services propose a reasonable limitation on this request, WMG will consider it.

**Document Request No. 28.** Documents sufficient to show, for each year from 2013 to the present, the royalty rates and terms for any sound recording licenses, fees or tariffs, paid or payable by any cable radio, CABSAT or satellite radio service in each country outside the United States.

**RESPONSE:** WMG objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of information that would be extremely burdensome to collect, review and produce. The burden would far outweigh any alleged benefit.

WMG further objects to the request for this information as irrelevant and premature. In prior proceedings, neither WMG nor SoundExchange has proposed international rates and terms as benchmarks, and they currently have no plans to do so in this proceeding. Moreover, the Participants have not yet submitted their written direct statements or disclosed their benchmark agreements. Without waiver of and subject to WMG’s general and specific objections, to the extent that WMG or SoundExchange uses such documents as part of a benchmark in its written direct statement, WMG will consider searching for and producing responsive documents for

certain relevant agreements. Until that time, WMG does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 29.** All communications related to Sirius XM's use of Warner music and/or its direct license program, including without limitation emails, correspondence, draft press releases, and any joint representation or common interest agreements. The time period for this Request is from inception of the Sirius XM direct license program to the present.

**RESPONSE:** WMG objects to the request for "all" communications "related to Sirius XM's use of WMG music" as overbroad, unduly burdensome, and vague and ambiguous, because it could encompass an extremely large volume of information from a large number of custodians, much of which would be irrelevant to the issues in this proceeding. WMG objects to the request for all communications related to Sirius XM's "direct license" program on the same grounds. WMG objects to the request for any joint representation or common interest agreements related to Sirius XM's use of WMG music or its direct license program as vague, ambiguous and irrelevant to the issues in this proceeding and to the extent it seeks information that is privileged or otherwise protected from disclosure. WMG objects to the request for draft press releases as overbroad and unduly burdensome, and because final releases speak for themselves, rendering drafts irrelevant.

WMG further objects to the time period contemplated by this request as overbroad and unduly burdensome. WMG also objects to the request for this information as premature. The parties have not yet submitted their written direct statements, and whether WMG will submit witness testimony related to Sirius XM's use of WMG's music or Sirius XM's direct license program is undetermined. If WMG does submit such testimony, then the Services can seek documents "directly related" to that testimony, to the extent WMG has any such documents, after the testimony has been submitted. Until that time, WMG does not agree to produce the requested information, if it has any.

**Document Request No. 30.** All public statements, remarks, testimony, speeches, including but not limited to Congressional testimony, declarations, affidavits, articles, tweets, or blog postings,

made by or given by Warner or any officer, employee, or representative of Warner concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information and information that is trivial. WMG further objects to the request as overbroad, unduly burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to the issues in this proceeding. There potentially are numerous documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. If the Services propose a reasonable limitation on this request, WMG will consider it.

**Document Request No. 31.** All documents provided to (or prepared in anticipation of providing them to) the Securities and Exchange Commission, Congress, the Copyright Office, the Department of Justice, or any other governmental agency concerning this rate proceeding, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive. WMG further objects to the request as overbroad, unduly burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to the issues in this proceeding. There are documents concerning these broad subject matters that have absolutely nothing to do with any of the issues in this proceeding. If the Services propose a reasonable limitation on this request, WMG will consider it.

**Document Request No. 32.** All written and oral testimony and exhibits (in restricted/non-public form where applicable) submitted by any Warner witness in a prior Copyright Royalty Board proceeding or ASCAP or BMI rate court proceeding.

**RESPONSE:** WMG objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive because it is not reasonably limited to subject matters at issue in this

proceeding. Testimony and exhibits from prior CRB, ASCAP or BMI rate court proceedings may have nothing to do with the issues in this proceeding. WMG also objects to the request for Restricted, confidential, or non-public information to the extent the disclosure of such information is prohibited by protective orders entered in those other proceedings. If the Services propose a reasonable limitation on this request, WMG will consider it.

Respectfully submitted,

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*Counsel for Warner Music Group*

Dated: July 25, 2016

**CERTIFICATE OF SERVICE**

I, Alex Trepp, do hereby certify that, on the 25<sup>th</sup> day of July, 2016, copies of the foregoing were sent via electronic mail to all parties at the email addresses listed below. Hard copies will follow by first class mail.

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*Counsel for SiriusXM Radio, Inc.*

Dated: July 25, 2016

/s/ Alex Trepp  
Alex Trepp



Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
The Library of Congress

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and “Preexisting”  
Subscription Services (SDARS III)

Docket No. 16–CRB–0001–SR/PSSR

(2018–2022)

**A2IM’S RESPONSES AND OBJECTIONS TO THE FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO AMERICAN ASSOCIATION OF  
INDEPENDENT MUSIC FROM SIRIUS XM, MUSIC CHOICE, AND MUZAK**

The American Association of Independent Music (“A2IM”), by its attorneys, hereby responds and objects to the First Set of Requests for Production of Documents to A2IM from Sirius XM, Music Choice, and Muzak (the “Requests”).

**GENERAL OBJECTIONS**

1. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon A2IM requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, or any other applicable rule or order governing this proceeding, including applicable prior precedent.
2. A2IM objects to the Requests, including all Definitions and Instructions, as premature to the extent that they purport to impose a duty on A2IM to produce documents. While A2IM is willing to make certain voluntary disclosures of information before it submits its written direct case, Congress contemplated that discovery in CRB royalty rate proceedings would commence after submission of the Participants’ written direct statements and according to a schedule issued after the Copyright Royalty Judges considered the views of Participants in the proceeding. 17

U.S.C. § 803(b)(6)(C)(i), (ii). The CRB regulations likewise contemplate that a discovery schedule will issue after the Participants submit written direct statements and after the Copyright Royalty Judges have conferred with the participants. 37 C.F.R. § 351.5(a). Any documents that A2IM agrees to produce prior to the submission of its written direct statement will be produced on a voluntary basis. A2IM reserves its rights to challenge the CRB's authority to require discovery prior to the submission of written direct statements.

3. A2IM objects to the Requests, including all Definitions and Instructions, as premature because the parties have not yet submitted written direct statements. The Requests therefore seek documents that necessarily are not "directly related" to A2IM's written direct statement. *See* 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

4. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

5. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad, and/or unduly burdensome, and to the extent they would require A2IM to spend an unreasonable amount of time, effort, and resources in order to respond.

6. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests or call for information that is publicly available and readily accessible. Such Requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

7. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation,

agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product immunity doctrine, and any other applicable privilege or doctrine.

8. A2IM objects to the Requests, including all Definitions and Instructions, to the extent any Request contains factually inaccurate information or statements, is argumentative, is predicated on erroneous assumptions or states legal conclusions. A statement herein that A2IM will produce documents responsive to a Request does not indicate and should not be construed as meaning that A2IM agrees, admits, or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, or that the documents are relevant and admissible.

9. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they seek to impose obligations on any member of A2IM that is not a participant in this proceeding. Its members' documents are not in A2IM's possession, custody or control.

10. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not in the possession, custody, or control of A2IM, including documents from other parties or members of A2IM.

11. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they seek documents from other proceedings. Such requests are overbroad, harassing, and unduly burdensome. A2IM further objects to such requests to the extent they violate or are inconsistent with any statute, rule, order, or other authority governing the other proceeding, including applicable protective orders and prior precedent.

12. A2IM objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive, and harassing, to the extent they seek the production of draft documents, which may be numerous and irrelevant to resolution of the issues in this proceeding.

13. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they seek "all documents" of a certain nature, as vague, ambiguous, overbroad, and unduly burdensome.

14. A2IM objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that do not exist or are not maintained in the ordinary course of business. A2IM also objects to the Requests, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business.

15. By agreeing to search for and produce documents responsive to any particular Request, A2IM does not represent that such documents exist or that they are in the possession, custody or control of A2IM, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

16. A2IM reserves any and all objections to the use or admissibility in any proceeding of any information, material, documents, or communications identified, produced or disclosed in response to the Requests.

17. A2IM objects to the requested date of production as unduly burdensome, and providing insufficient time for A2IM to locate responsive documents. A2IM will produce documents as set forth below and after conducting a reasonable search.

18. The responses and objections contained herein are made to the best of A2IM's present knowledge, belief, and information, and are based on a reasonable, diligent, and ongoing search.

A2IM reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

### **OBJECTIONS TO DEFINITIONS**

1. A2IM objects to the definition of “A2IM,” “you” and “your” in Definition No. 1 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including board members, committee members, and anyone acting on A2IM’s behalf. A2IM objects to the Definition as overbroad, unduly burdensome, oppressive, harassing and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose an obligation on any member of A2IM that is not a participant in this proceeding. A2IM also objects to the Definition to the extent it seeks to impose an obligation to produce record company documents not in the possession, custody or control of the A2IM, and objects to the term “affiliated companies” as vague and ambiguous. A2IM further objects to the Definition to the extent it imposes an obligation to produce competitively sensitive information from record companies. A2IM does not collect or possess such information.
2. A2IM objects to the definition of “Digital Music Service” in Definition No. 2 to the extent it purports to define the relevant universe of services as broadly as possible without limitation to issues that are relevant to this proceeding. To the extent the Requests purport to impose an obligation to produce documents related to the overbroad array of services described in the definition, including documents for services operating outside of the United States, A2IM

objects to the Definition as irrelevant, overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding.

3. A2IM objects to the definition of “Document” and “documents” in Definition No. 3 to the extent it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding, and to the extent it suggests that the Federal Rules of Civil Procedure govern discovery in this proceeding.

4. A2IM objects to the definition of “Record Company” in Definition No. 7 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose obligations on any record company that is not a participant in this proceeding.

#### **OBJECTIONS TO INSTRUCTIONS**

1. A2IM objects to the Instructions to the extent they seek to impose obligations that are inconsistent with or not supported by the governing statute or regulations.

2. A2IM objects to Instruction No. 1 to the extent it is inconsistent with the requirements imposed by statute, regulations and the Court’s “Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order.”

3. A2IM objects to Instruction No. 2 as overbroad, unduly burdensome, harassing, oppressive, and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose an obligation to collect documents from any record company that is not a participant in this proceeding. A2IM also objects to the Instruction as overbroad, unduly burdensome, harassing, oppressive, and exceedingly vague, to the extent that it seeks to impose an obligation to collect documents from an unreasonably wide array of people and entities,

including "A2IM's or any Record Company's attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with A2IM or any Record Company." There are thousands of people and entities who might fit this description and the request to produce documents in the possession of any of them is egregiously overbroad.

4. A2IM objects to Instruction No. 5's request for a privilege log, which purports to impose upon A2IM requirements that exceed 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding. The governing statute and regulations do not provide for the exchange of privilege logs, and providing privilege logs would be extremely burdensome given the limited time for discovery in this proceeding. A2IM will not produce a privilege log in connection with its production of documents.

5. A2IM objects to Instruction No. 7 to the extent it seeks to impose an obligation to interpret language that is ambiguous.

6. A2IM objects to Instruction No. 9 to the extent it seeks documents from time periods the Services themselves have deemed not reasonably related to the matters in this proceeding (i.e., time periods prior to January 1, 2013). Unless otherwise indicated in response to a specific Request, A2IM will produce documents for the time period January 1, 2013 through the present.

#### **RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

Subject to and without waiving the foregoing objections, A2IM sets forth below specific responses and objections to the Requests.

**Document Request 1.** All agreements executed or in effect between January 1, 2013 and the present between any Digital Music Service and any Record Company, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, renewed, adapted, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** A2IM objects to the request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it seeks “all” responsive documents. A2IM objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues and participants in this proceeding, to the extent it seeks agreements between “any Digital Music Service” and “any Record Company.” As set forth in A2IM’s Objections to Definitions above, “Digital Music Service” and “Record Company” are defined too broadly and are not reasonably limited to the issues and participants in this proceeding. A2IM further objects to this request to the extent it is duplicative of requests served on other participants in this proceeding, to the extent it seeks documents not in the possession, custody, or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 2.** All agreements executed between January 1, 2013, and the present between any PSS and any Record Company, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, adapted, renewed, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** A2IM objects to the request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues in this proceeding, to the extent it seeks “all” responsive documents. A2IM objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the participants in this proceeding, to the extent it seeks agreements with “any Record Company.” A2IM further objects to this request to

the extent it is duplicative of requests served on other participants in this proceeding, to the extent it seeks documents not in the possession, custody or control of A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

A2IM objects to this request from the PSS (Music Choice and Muzak) to produce their agreements with record companies, because such agreements are already in Music Choice and Muzak's possession. It is harassing and unnecessary to ask parties to produce Music Choice's and Muzak's agreements back to them.

At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 3.** All agreements executed between January 1, 2013, and the present in any other service category that A2IM intends to use as a benchmark in this proceeding, including any amendments, extensions or renewals of such agreements. To the extent an agreement executed before January 1, 2013 was modified, extended, adapted, renewed, amended or otherwise altered after January 1, 2013, the original (pre-2013) agreement shall be produced in addition to the post-2013 modifications/extensions.

**RESPONSE:** A2IM objects to the request for this information as premature. The participants have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. A2IM also objects to this request to the extent it is duplicative of requests served on other participants in this proceeding, to the extent it seeks documents not in the possession, custody, or control of A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 4.** To the extent not encompassed in Requests 1-3 above, Exhibit 2 to Simon Wheeler's written rebuttal testimony in the Web IV proceeding (and all agreements included therein), any subsequent modifications, extensions, and/or renewals of such agreements, and any new agreements with same counter-parties.

**RESPONSE:** A2IM objects to this request for materials from a prior proceeding, which are governed by a protective order in that proceeding. A2IM objects to the request as overbroad, unduly burdensome, oppressive and harassing, to the extent that the referenced Exhibit contains numerous documents that are irrelevant to the issues in this proceeding. At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record company.

**Document Request 5.** For each agreement responsive to Requests 1-4 above, statements, payments, and/or play details sufficient to calculate effective rates for such services from January 1, 2013 to present.

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues and participants in this proceeding, to the extent it relates to all agreements responsive to the prior requests. A2IM objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

A2IM also objects to the request for this information as premature. The participants have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Information sufficient to calculate effective rates for certain agreements may be relevant once the parties have disclosed their benchmark agreements. At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 6.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to the present (as specified by the agreement), documents sufficient to show:

- a. total payments collected from the service;
- b. revenue reported by the service (including the calculation of revenue base, if available);
- c. advances paid during the reporting period;
- d. number of subscribers during the reporting period, including the number of users of various service tiers (e.g., users of free tiers versus paid tiers);
- e. number of streams/plays during the reporting period;
- f. number of downloads, ringtones, ringbacks and/or mastertones sold during the reporting period;
- g. reported advertising and other ancillary revenue;
- h. the service retail price (including all tiers);
- i. the Record Company's pro rata share for any aspect of the service reported; and
- j. any other data reported to the Record Company (other than logs of specific songs streamed or downloaded).

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues or participants in this proceeding, to the extent

it relates to all agreements responsive to the prior requests. A2IM objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

A2IM also objects to the request for this information as premature. The participants have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements. At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

At any rate, A2IM itself does not possess these documents; they are in the possession of the record companies. The record-company participants will provide the agreements to the extent set forth in their written responses. To the extent the request seeks agreements or related information from record companies that are not participants and that do not supply a witness in this proceeding, A2IM objects and does not agree to produce.

**Document Request 7.** For each agreement responsive to Requests 1-4 above, for each monthly, quarterly, or annual reporting period for the years 2013 to present (as specified by each agreement), all royalty statements or statements of account provided to the Record Company.

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues or participants in this proceeding, to the extent it relates to all agreements responsive to the prior requests. A2IM objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may be extremely burdensome to collect, review and produce. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

A2IM also objects to the request for this information as premature. The participants have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 8.** For any agreement that was entered into between a Record Company and any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for any agreement in a category that A2IM intends to present as a benchmark in this proceeding, (a) all drafts of such agreements and correspondence concerning such drafts, and (b) all documents, whether internal to the Record Company or between the Record Company and service, concerning the value of the agreement or any of its provisions to either the buyer/licensee or seller/licensor.

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the issues or participants in this proceeding,

to the extent it seeks documents related to “any agreement” responsive to the request. A2IM objects to this request as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to the participants in this proceeding, to the extent it seeks documents related to agreements between “a Record Company” and the specified digital music services. As set forth in A2IM’s Objections to Definitions above, “Record Company” is defined too broadly and is not reasonably limited to the participants in this proceeding. A2IM further objects to this request to the extent it is duplicative of requests served on other participants in this proceeding, to the extent it seeks documents not in the possession, custody, or control of A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

A2IM also objects to this request because agreements speak for themselves and drafts are irrelevant to determining the rates and terms in the agreements themselves, absent ambiguity. A2IM also objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it seeks drafts and correspondence for a large number of agreements. Such information would be extremely time-consuming to collect, review and produce, and the burden would far outweigh any alleged benefit.

A2IM further objects to the request for valuation information as premature. The participants have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Valuation information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record

companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 9.** For any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for services in any other category of service that A2IM intends to present as a benchmark in this proceeding, all analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the market characteristics for each service, including without limitation documents discussing, analyzing, or evidencing:

- a. the consumer demand, price at every level a price is charged, demand or price elasticities, and other characteristics of the Service;
- b. consumer usage of the Service;
- c. whether the Service may serve as a substitute for other Digital Music Services, terrestrial radio, sales of physical copies of sound recordings (e.g., CDs), sales of digital downloads, or for any other distribution channels for sound recordings;
- d. whether the Service promotes or otherwise increases the sale, distribution, or other licensed uses of sound recordings; and
- e. comparisons of the Service with satellite radio or any other Digital Music Service.

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome, oppressive harassing and not reasonably limited to the issues in this proceeding. A2IM objects to this request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce.

A2IM also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding. Some of the information responsive to this request for certain agreements may be relevant once the parties have disclosed their benchmark agreements.

Without waiver of and subject to A2IM's general and specific objections, to the extent that such information becomes relevant, A2IM will consider searching for and producing responsive

documents. Until that time, A2IM does not agree to produce documents responsive to this request, if it has any.

**Document Request 10.** Each Record Company's annual financial statements, whether audited or unaudited, at every level of specificity at which they are created or maintained, including without limitation cost and revenue breakdowns, digital and physical revenue and costs, and digital revenues reported by Digital Music Service category (e.g., non-interactive and custom radio or webcasting services, interactive or on-demand services, video services). For 2016, all available quarterly results should be produced.

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. A2IM objects to the request for this information as premature given that the parties have not yet submitted their written direct statements and record company financials may not be relevant to A2IM's written direct statement. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 11.** Documents sufficient to show each Record Company's projected revenue, costs and expenses by category over the 2016-2022 licensing period.

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome, oppressive, and harassing to the extent it requests projections by categories that may not be maintained in the ordinary course of business or that may be burdensome to collect, review and produce. A2IM objects to the request for this information as premature given that the parties have not yet

submitted their written direct statements and record companies' projected financials may not be relevant to A2IM's written direct statement. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

At any rate, A2IM does not collect competitively sensitive information. As a result, A2IM itself does not possess these documents, which are in the possession of the record companies. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses.

**Document Request 12.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. the promotional value and/or substitutional effect of Sirius XM or any PSS on sales, subscriptions to other Digital Music Services, or other sources of revenue;
- b. any substitution between Digital Music Services (including Sirius XM or any PSS) and sales, subscriptions, and radio;
- c. the relative elasticities of demand across different Digital Music Services at both the licensing and consumer sales/use level;
- d. customer preferences related to lean-back or lean-forward experiences or services;
- e. listening of on-demand service users to non-on-demand service features and modes of listening (e.g., non-interactive listening features, playlists);
- f. any purported shift from music ownership to access; and
- g. listening of subscribers to Sirius XM or any PSS.

**RESPONSE:** A2IM objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM also objects to the extent the request seeks information that may be difficult to locate.

Without waiver of and subject to A2IM's general and specific objections, A2IM will search for

and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 13.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the ability of any Digital Music Service to “steer” plays toward or away from particular Record Companies, or to steer listening more generally.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM also objects to the extent the request seeks information that may be difficult to locate.

A2IM objects to the request for documents concerning “the ability of any Digital Music Service . . . to steer listening more generally” as overbroad, unduly burdensome, oppressive and harassing to the extent it is vague, ambiguous, and not reasonably limited to the issues in this proceeding. Without waiver of and subject to A2IM’s general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 14.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning or relating to the relative value of the programming of music versus the music itself to consumers of any Digital Music Service.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM also objects to the extent the request seeks information that may be difficult to locate.

A2IM further objects to the comparison contemplated by this request as vague and ambiguous.

Without waiver of and subject to A2IM’s general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 15.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents addressing and/or quantifying the degree to which plays on on-demand or interactive services (whether in general or particular) are from playlists programmed by the service, from playlists programmed by users of the service or other third-parties, or reflect songs chosen specifically by the user for on-demand listening.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM also objects to the extent the request seeks information that may be difficult to locate.

A2IM further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to A2IM’s general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 16.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning whether users of interactive services desire features that editorialize, curate, or recommend music, or that such users want to listen to service- programmed plays, including any data, communications or other information regarding the share of programmed plays on such services and (or as compared to ) the share of user-selected plays on such services (including without limitation Spotify, Rdio, Rhapsody, Google Play All Access, Amazon Prime, and Slacker).

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM also objects to the extent the request seeks information that may be difficult to locate.

A2IM further objects to the comparison contemplated by this request because the request fails to make clear why such a comparison is relevant to this proceeding. Without waiver of and subject to A2IM’s general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 17.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. a digital distribution or licensing strategy;
- b. the role of promotion and/or substitution in the licensing strategy; and
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service or terrestrial radio on other sources of revenue.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM further objects to the request for all documents concerning digital distribution or licensing strategy as vastly overbroad, vague and not reasonably limited to issues in this proceeding.

There are potentially numerous documents concerning digital distribution or licensing strategy that have absolutely nothing to do with any of the issues in this proceeding. A2IM also objects to the extent the request seeks information that may be difficult to locate. Without waiver of and subject to A2IM’s general and specific objections, A2IM will search for and produce documents, if any, responsive to parts (b) and (c) of this request that can be located after a reasonable and diligent search.

**Document Request 18.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning any Record Company’s strategy for licensing Digital Music Services, or the effect on the Record Company’s revenues or business of its licenses with Digital Music Services.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding. A2IM also objects to the request for all documents concerning licensing strategy or the effect on record company revenues or business as vastly overbroad,

vague and not reasonably limited to issues in this proceeding. If the Services propose a reasonable limitation on this request, A2IM will consider it.

**Document Request 19.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of YouTube or any other Interactive Streaming Service offering access to audiovisual recordings (e.g., VEVO, Vimeo) on each Record Company's actual or projected revenues or otherwise on its business.

**RESPONSE:** A2IM objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. A2IM objects to the extent the request seeks information that may be difficult to locate. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding. A2IM further objects to this request as vague and ambiguous. Without waiver of and subject to A2IM's general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 20.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of free or ad-supported Interactive Streaming Services offering access to audio recordings on each Record Company's actual or projected revenues or otherwise on its business.

**RESPONSE:** A2IM objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. A2IM objects to the extent the request seeks information that may be difficult to locate. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a

witness for this proceeding. A2IM further objects to the request as vague and ambiguous.

Without waiver of and subject to A2IM's general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 21.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any PSS on each Record Company's actual or projected revenues or otherwise on its business.

**RESPONSE:** A2IM objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. A2IM objects to the extent the request seeks information that may be difficult to locate. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding. A2IM further objects to the request as vague and ambiguous.

Without waiver of and subject to A2IM's general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 22.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of any CABSAT on each Record Company's actual or projected revenues or otherwise on its business.

**RESPONSE:** A2IM objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. A2IM objects to the extent the request seeks information that may be difficult to locate. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent

it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding. A2IM further objects to the request as vague and ambiguous. A2IM also objects to the request for this information as premature. The participants have not yet submitted their written direct statements. Documents related to the effect of any CABSAT on each Record Company's actual or projected revenues or business may be relevant once the parties have submitted their written direct statements.

Without waiver of and subject to A2IM's general and specific objections, to the extent that such information becomes relevant, A2IM will consider searching for and producing responsive documents. Until that time, A2IM does not agree to produce documents responsive to this request, if it has any.

**Document Request 23.** All documents related to the potential entry of any Digital Music Service into the CABSAT market, including any documents relating to any Record Company's encouragement or facilitation of such market entry.

**RESPONSE:** A2IM objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. A2IM objects to the extent the request seeks information that may be difficult to locate. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

A2IM also objects to the request for this information as premature. The participants have not yet submitted their written direct statements. Documents related to the potential entry of digital music services into the CABSAT market may be relevant once the parties have submitted their written direct statements. Without waiver of and subject to A2IM's general and specific objections, to the extent that such information becomes relevant, A2IM will consider searching

for and producing responsive documents. Until that time, A2IM does not agree to produce documents responsive to this request, if it has any.

**Document Request 24.** All documents related to the effect of statutory rates on license fees that any Record Company is able to obtain in direct license negotiations with Digital Music Services.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. A2IM objects to the extent the request seeks information that may be difficult to locate. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding. A2IM further objects to the request as vague and ambiguous.

The A2IM does not collect competitively sensitive information. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses. Without waiver of and subject to A2IM’s general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 25.** All documents concerning the effect of statutory streaming royalties on any Record Company’s investment in developing sound recordings.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. A2IM objects to the extent the request seeks information that may be difficult to locate. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent

it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding.

The A2IM does not collect competitively sensitive information. To the extent this request seeks documents from record company participants, those companies will provide the documents to the extent set forth in their written responses. Without waiver of and subject to A2IM's general and specific objections, A2IM will search for and produce responsive documents, if any, that can be located after a reasonable and diligent search.

**Document Request 26.** Documents sufficient to evidence any Record Company's relative contribution, as defined in Section 801(b)(1)(c), with respect to cable radio, satellite radio, or otherwise to the offerings of Sirius XM, the PSS, or the CABSATs.

**RESPONSE:** A2IM objects to this request as overbroad, unduly burdensome and premature. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding. A2IM further objects to the request as vague and ambiguous.

The parties have not yet submitted their written direct statements, and whether A2IM will submit witness testimony related to relative contributions under Section 801(b)(1)(c) is undetermined at this time. If A2IM does submit such testimony, then the Services can seek documents "directly related" to that testimony, to the extent A2IM has any such documents, after the testimony has been submitted. Until that time, A2IM does not agree to produce documents responsive to this request, if it has any.

**Document Request 27.** All documents submitted by the Record Companies or A2IM to the Federal Trade Commission or European Commission in connection with the Universal/EMI merger, and any other submissions made to those or other government agencies by the Record Companies or A2IM, since the Universal/EMI merger, involving investigations related to

competition among the Record Companies or between the Record Companies and other music distributors.

**RESPONSE:** A2IM objects to the request as overbroad, unduly burdensome, oppressive harassing and not reasonably limited to the issues in this proceeding, to the extent it seeks “all” responsive documents, including documents submitted to agencies located outside the United States. A2IM objects to the request as overbroad, unduly burdensome, and oppressive, to the extent the request for “all” responsive documents will yield cumulative information. A2IM objects to the request to the extent it is duplicative of requests served on other parties, to the extent it seeks documents not in the possession, custody or control of the A2IM, and to the extent it seeks documents from record companies that are not participants or that do not supply a witness for this proceeding. A2IM objects to the request for “any submissions . . . involving investigations related to competition” between certain entities as overbroad, unduly burdensome, oppressive, harassing, vague, ambiguous and nonspecific. As to the request for documents submitted to the FTC or European Commission in connection with the Universal/EMI merger, if the Services propose a reasonable limitation on this request, A2IM will consider it.

**Document Request 28.** Minutes from all meetings of the A2IM board and any A2IM committees from 2013 to the present, concerning SDARS, PSS, CABSAT, Sirius XM, Music Choice and/or Muzak, as well as concerning the licensing of Digital Music Services and/or fees associated with or related to Digital Music Services.

**RESPONSE:** A2IM objects to the request to the extent it seeks information or documents protected from discovery under any privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine. A2IM objects to the request as vastly overbroad and not reasonably limited to the issues in this proceeding. A2IM objects to the request as vague and ambiguous. A2IM objects to the request as seeking documents beyond the scope of

permissible discovery under CRB precedent. A2IM does not agree to produce the requested documents.

**Document Request 29.** All communications among or between A2IM board members or employees, A2IM and its membership (including questions or communications of any kind from members to A2IM, and responses from A2IM), or between A2IM and any industry groups (e.g., AFM, SoundExchange, A2IM, Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), The Future of Music Coalition, The Recording Academy, etc.) related to the Sirius XM direct license program, including without limitation emails, correspondence, draft press releases, final press releases, and any joint representation or common interest agreements. The time period for this Request is from inception of the Sirius XM direct license program to the present.

**RESPONSE:** A2IM objects to the request for “all” responsive communications as overbroad, unduly burdensome and oppressive. A2IM objects to the request as vague, ambiguous and potentially overbroad, unduly burdensome, and oppressive, to the extent it seeks communications for a time period beginning “from inception of the Sirius XM direct license program to the present.” A2IM also objects to the request for draft press releases as potentially overbroad and burdensome, and because the final releases speak for themselves. A2IM objects to the request to the extent it seeks information or documents protected from discovery under any privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine.

A2IM also objects to the request for this information as premature. The participants have not yet submitted their written direct statements. Without waiver of and subject to A2IM’s general and specific objections, to the extent that such information becomes relevant, A2IM will consider searching for and producing responsive documents. Until that time, A2IM does not agree to produce documents responsive to this request, if it has any.

**Document Request 30.** All press releases, newsletters, member communications and other general publications distributed by A2IM concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information.

A2IM also objects to the extent the request seeks information that may be difficult to locate.

A2IM further objects to this request as vague and ambiguous. A2IM further objects to the request for all documents concerning statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services as vastly overbroad, vague and not reasonably limited to the issues in this proceeding.

A2IM does not agree to produce documents responsive to this request. If the Services propose a reasonable limitation on this request, A2IM will consider it.

**Document Request 31.** All public statements, remarks, testimony, speeches, including but not limited to Congressional testimony, declarations, affidavits, articles, tweets, or blog postings, made by or given by A2IM or any officer, employee, or representative of A2IM concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information and information that is trivial. A2IM further objects to the request as overbroad, unduly burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to the issues in this proceeding. If the Services propose a reasonable limitation on this request, A2IM will consider it.

**Document Request 32.** All documents provided to (or prepared in anticipation of providing them to) the Securities and Exchange Commission, Congress, the Copyright Office, the Department of Justice or any other governmental agency concerning this rate proceeding, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** A2IM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive. A2IM further objects to the request as overbroad, unduly

burdensome and oppressive because it is vague and seeks irrelevant information not reasonably limited to subject matters at issue in this proceeding. If the Services propose a reasonable limitation on this request, A2IM will consider it.

Respectfully submitted,

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Dated: July 22, 2016

**CERTIFICATE OF SERVICE**

I, Alex Trepp, do hereby certify that, on the 25<sup>th</sup> day of July, 2016, copies of the foregoing were sent via electronic mail to all parties at the email addresses listed below. Hard copies will follow by first class mail.

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Dated: July 25, 2016

/s/ Alex Trepp  
Alex Trepp



Before the  
**UNITED STATES COPYRIGHT ROYALTY JUDGES**  
Library of Congress

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and “Preexisting”  
Subscription Services (SDARS III)

Docket No. 16–CRB–0001–SR/PSSR

(2018–2022)

**AFM’S RESPONSES AND OBJECTIONS TO THE FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO THE AMERICAN FEDERATION OF  
MUSICIANS OF THE UNITED STATES AND CANADA FROM SIRIUS XM, MUSIC  
CHOICE, AND MUZAK**

The American Federation of Musicians of the United States and Canada (“AFM”), by its attorneys, hereby responds and objects to the First Set of Requests for Production of Documents to AFM from Sirius XM, Music Choice, and Muzak (the “Requests”).

**GENERAL OBJECTIONS**

1. AFM objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon AFM requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, or any other applicable rule or order governing this proceeding, including applicable prior precedent.
2. AFM objects to the Requests, including all Definitions and Instructions, as premature to the extent that they purport to impose a duty on AFM to produce documents. While AFM is willing to make certain voluntary disclosures of information before it submits its written direct case, Congress contemplated that discovery in CRB royalty rate proceedings would commence after submission of the Participants’ written direct statements and according to a schedule issued after the Copyright Royalty Judges considered the views of Participants in the proceeding. 17

U.S.C. § 803(b)(6)(C)(i), (ii). The CRB regulations likewise contemplate that a discovery schedule will issue after the Participants submit written direct statements and after the Copyright Royalty Judges have conferred with the participants. 37 C.F.R. § 351.5(a). Any documents that AFM agrees to produce prior to the submission of its written direct statement will be produced on a voluntary basis. AFM reserves its rights to challenge the CRB's authority to require discovery prior to the submission of written direct statements.

3. AFM objects to the Requests, including all Definitions and Instructions, as premature because the parties have not yet submitted written direct statements. The Requests therefore seek documents that necessarily are not "directly related" to AFM's written direct statement. *See* 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

4. AFM objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

5. AFM objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad, and/or unduly burdensome, and to the extent they would require AFM to spend an unreasonable amount of time, effort, and resources in order to respond.

6. AFM objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests or call for information that is publicly available and readily accessible. Such Requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

7. AFM objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client

privilege and work-product immunity doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product immunity doctrine, and any other applicable privilege or doctrine.

8. AFM objects to the Requests, including all Definitions and Instructions, to the extent any Request contains factually inaccurate information or statements, is argumentative, is predicated on erroneous assumptions or states legal conclusions. A statement herein that AFM will produce documents responsive to a Request does not indicate and should not be construed as meaning that AFM agrees, admits, or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, or that the documents are relevant and admissible.

9. AFM objects to the Requests, including all Definitions and Instructions, to the extent they seek to impose obligations on any member of AFM that is not a participant in this proceeding. Its members' documents are not in AFM's possession, custody or control.

10. AFM objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not in the possession, custody, or control of AFM, including documents from other parties or members of AFM.

11. AFM objects to the Requests, including all Definitions and Instructions, to the extent they seek documents from other proceedings. Such requests are overbroad, harassing, and unduly burdensome. AFM further objects to such requests to the extent they violate or are inconsistent with any statute, rule, order, or other authority governing the other proceeding, including applicable protective orders and prior precedent.

12. AFM objects to the Requests, including all Definitions and Instructions, to the extent they seek “all documents” of a certain nature, as vague, ambiguous, overbroad, and unduly burdensome.

13. AFM objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive, and harassing, to the extent they seek the production of draft documents, which may be numerous and irrelevant to resolution of the issues in this proceeding.

14. AFM objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that do not exist or are not maintained in the ordinary course of business. AFM further objects to the Requests, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business.

15. By agreeing to search for and produce documents responsive to any particular Request, AFM does not represent that such documents exist or that they are in the possession, custody or control of AFM, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

16. AFM reserves any and all objections to the use or admissibility in any proceeding of any information, material, documents, or communications identified, produced or disclosed in response to the Requests.

17. AFM objects to the requested date of production as unduly burdensome, and providing insufficient time for AFM to locate responsive documents. AFM will produce documents as set forth below and after conducting a reasonable search.

18. The responses and objections contained herein are made to the best of AFM’s present knowledge, belief, and information, and are based on a reasonable, diligent, and ongoing search.

AFM reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

### **OBJECTIONS TO DEFINITIONS**

1. AFM objects to the definition of “AFM,” “you” and “your” in Definition No. 1 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including board members, committee members, and anyone acting on AFM’s behalf. AFM objects to the Definition as overbroad, unduly burdensome, oppressive, harassing and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose an obligation on any member of AFM that is not a participant in this proceeding. AFM also objects to the Definition to the extent it seeks to impose an obligation to produce documents not in AFM’s possession, custody or control and objects to the term “affiliated companies” as vague and ambiguous.
2. AFM objects to the definition of “Digital Music Service” in Definition No. 2 to the extent it purports to define the relevant universe of services as broadly as possible without limitation to issues that are relevant to this proceeding. To the extent the Requests purport to impose an obligation to produce documents related to the overbroad array of services described in the definition, including documents for services operating outside of the United States, AFM objects to the definition as irrelevant, overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding.
3. AFM objects to the definition of “Document” and “documents” in Definition No. 3 to the extent it purports to impose obligations beyond the scope of the applicable statute and

regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding, and to the extent it suggests that the Federal Rules of Civil Procedure govern discovery in this proceeding.

4. AFM objects to the definition of “SoundExchange,” in Definition No. 8 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents related to an unreasonably wide array of people and entities, including board members, committee members and anyone acting on SoundExchange’s behalf. AFM objects to the capitalized but undefined term “SoundExchange Witnesses” as vague and ambiguous; to the extent the term refers to witnesses who may submit written direct testimony on behalf of SoundExchange, AFM objects to the extent that such witnesses have not yet been identified. AFM also objects to the extent the Definition purports to impose an obligation to produce documents not in AFM’s possession, custody or control. AFM objects to the term “affiliated companies” as vague and ambiguous. To the extent that term seeks to impose an obligation to produce documents related to the thousands of record companies to whom SoundExchange distributes royalty payments, it is overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding.

#### **OBJECTIONS TO INSTRUCTIONS**

1. AFM objects to the Instructions to the extent they seek to impose obligations that are inconsistent with or not supported by the governing statute or regulations.

2. AFM objects to Instruction No. 1 to the extent it is inconsistent with the requirements imposed by statute, regulations and the Court's "Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order."

3. AFM objects to Instruction No. 2 as overbroad, unduly burdensome, harassing, oppressive, exceedingly vague and beyond the scope of permissible discovery in this proceeding, to the extent that it seeks to impose an obligation to collect documents from an unreasonably wide array of people and entities, including "AFM's attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with AFM." There are numerous people and entities who might fit this description and the request to produce documents in the possession of any of them is egregiously overbroad.

4. AFM objects to Instruction No. 4's request for a privilege log, which purports to impose upon AFM requirements that exceed 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding. The governing statute and regulations do not provide for the exchange of privilege logs, and providing privilege logs would be extremely burdensome given the limited time for discovery in this proceeding. AFM will not produce a privilege log in connection with its production of documents.

5. AFM objects to Instruction No. 6 to the extent it seeks to impose an obligation to interpret language that is ambiguous.

6. AFM objects to Instruction No. 8 to the extent it seeks documents from time periods the Services themselves have deemed not reasonably related to the matters in this proceeding (i.e., time periods prior to January 1, 2013). Unless otherwise indicated in response to a specific Request, AFM will produce documents for the time period January 1, 2013 through the present.

## RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS

Subject to and without waiving the foregoing objections, AFM sets forth below specific responses and objections to the Requests.

**Document Request No. 1.** All press releases, newsletters, member communications and other general publications distributed by AFM concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information and information that is trivial. AFM objects to the request to the extent it seeks information that may be difficult to locate. AFM objects to the request as vague and ambiguous. AFM objects to the request as overbroad, unduly burdensome, oppressive and harassing, to the extent it calls for information that is publicly available and readily accessible.

AFM further objects to the request for all documents concerning statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services as vastly overbroad, unduly burdensome, oppressive, vague and not reasonably limited to issues in this proceeding. Without waiver of and subject to AFM’s general and specific objections, AFM will produce responsive documents relating to this rate proceeding that can be located after a reasonable and diligent search.

**Document Request No. 2.** All public statements, remarks, testimony, speeches, including but not limited to Congressional testimony, declarations, affidavits, articles, tweets, or blog postings, made by or given by AFM or any officer, employee, or representative of AFM concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information

and information that is trivial. AFM objects to the request to the extent it seeks information that may be difficult to locate. AFM objects to the request as vague and ambiguous.

AFM further objects to the request for all documents concerning statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services as vastly overbroad, unduly burdensome, oppressive, vague and not reasonably limited to issues in this proceeding. If the Services propose a reasonable limitation on this request, AFM will consider it.

**Document Request No. 3.** All documents provided to (or prepared in anticipation of providing them to) the Securities and Exchange Commission, Congress, the Copyright Office, the Department of Justice or any other governmental agency concerning this rate proceeding, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. AFM objects to the request to the extent it seeks information that may be difficult to locate. AFM objects to the request as vague and ambiguous.

AFM further objects to the request for all documents concerning statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services as vastly overbroad, unduly burdensome, oppressive, vague and not reasonably limited to issues in this proceeding. If the Services propose a reasonable limitation on this request, AFM will consider it.

**Document Request No. 4.** For any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for services in any other category of service that you and/or SoundExchange intend to present as a benchmark in this proceeding, all analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the market characteristics for each service, including without limitation all documents discussing, analyzing, or evidencing:

- a. the consumer demand, price at every level a price is charged, demand or price elasticities, and other characteristics;
- b. consumer usage;
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service on other Digital Music Services, terrestrial radio, sales of physical copies of sound recordings (e.g., CDs), sales of digital downloads, or for any other distribution channels for sound recordings;
- d. whether any Service or digital music services generally promote or otherwise increase the sale, distribution, or other licensed uses of sound recordings; and
- e. comparisons of any Service with satellite radio or any other Digital Music Service.

**RESPONSE:** AFM objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests information that the AFM does not maintain in the ordinary course of its business.

AFM also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding.

Without waiver of and subject to AFM's general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 5.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. the promotional value and/or substitutional effect of Sirius XM or any PSS on sales, subscriptions to other Digital Music Services, or other sources of revenue;
- b. any substitution between Digital Music Services (including Sirius XM or any PSS) and sales, subscriptions, and radio;
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service or terrestrial radio on other sources of revenue.

- d. the relative elasticities of demand across different Digital Music Services at both the licensing and consumer sales/use level;
- e. customer preferences related to lean-back or lean-forward experiences or services;
- f. listening of on-demand service users to non-on-demand service features and modes of listening (e.g., non-interactive listening features, playlists);
- g. any purported shift from music ownership to access; and
- h. listening of subscribers to Sirius XM or any PSS.

**RESPONSE:** AFM objects to the request for "all" responsive documents as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests information that is not maintained in the ordinary course of the AFM's business. AFM objects to the request as vague and ambiguous. Without waiver of and subject to AFM's general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 6.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the ability of any Digital Music Service to "steer" plays toward or away from particular Record Companies, or to steer listening more generally.

**RESPONSE:** AFM objects to the request for "all" responsive documents as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests information that is not maintained in the ordinary course of the AFM's business. AFM further objects to the request for documents concerning record companies, because AFM does not represent record companies. Without waiver of and subject to AFM's general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 7.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of YouTube or any other

Interactive Streaming Service offering access to audiovisual recordings (e.g., VEVO, Vimeo) on record companies revenues or business.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive. AFM objects to this request as vague and ambiguous. AFM further objects to the request for documents concerning record companies, because AFM does not represent record companies. Without waiver of and subject to AFM’s general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 8.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the reasons that consumers purchase or do not purchase recorded music products or services, including survey results, reports, studies, analyses, communications and other documents addressing consumers’ preferences, interests or desires regarding such products or services or the pricing thereof.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM objects to the request as vague and ambiguous. AFM objects to this request to the extent it requests information not maintained in the ordinary course of the AFM’s business. Without waiver of and subject to AFM’s general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 9.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents related to measuring or attempting to measure the use by consumers of recorded music products or services.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome, oppressive and not reasonably limited to the issues in this proceeding. AFM objects to the request as vague and ambiguous. AFM objects to this request to the extent it requests information not maintained in the ordinary course of the AFM’s business. Without

waiver of and subject to AFM's general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 10.** All forecasts, studies, projections and analyses of wholesale or retail pricing of recorded music products or services, including but not limited to any documents relating to the effect of royalty rates on the pricing of recorded music products or services.

**RESPONSE:** AFM objects to the request for "all" responsive documents as overbroad, unduly burdensome, oppressive and not reasonably limited to the issues in this proceeding. AFM objects to this request to the extent it requests information not maintained in the ordinary course of the AFM's business. Without waiver of and subject to AFM's general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 11.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the extent to which the pricing of any recorded music product or service is constrained, or will in the future be constrained, by the pricing of any other recorded music product or service, or by piracy.

**RESPONSE:** AFM objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM further objects to the request as vague and ambiguous. AFM objects to this request to the extent it requests information not maintained in the ordinary course of the AFM's business. Without waiver of and subject to AFM's general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 12.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents comparing, evaluating, or differentiating any Digital Music Services.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM objects to the request as vague and ambiguous.

AFM further objects to this request to the extent it requests information not maintained in the ordinary course of the AFM’s business. Without waiver of and subject to AFM’s general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 13.** All documents relating to the digital music strategy of AFM, including all documents concerning the development, goals, and implementation of this strategy, and the effects of this strategy on licensing or withholding of licenses, royalty rates, costs and revenues.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM objects to the request for all documents related to “digital music strategy,” its implementation, and its effects as vastly overbroad, ambiguous, vague, and not reasonably limited to issues in this proceeding. AFM objects to the request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests information not maintained or centrally kept in the ordinary course of AFM’s business.

AFM objects to this Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions. AFM objects to the request to the extent it seeks information that is privileged or otherwise protected from disclosure. AFM further objects to the request for this information as premature, as the parties have not yet submitted their written direct statements. Documents concerning the subject matter of this request may be relevant once the parties have submitted their written direct statements. If AFM does submit such testimony, then the Services can seek documents “directly related” to

that testimony, to the extent AFM has any such documents, after the testimony has been submitted. Until that time, AFM does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 14.** All forecasts, studies, projections and analyses of sales of recorded music products or services of any kind or subscriptions to digital music services over all or any part of the period 2017-2022.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM objects to this request to the extent it requests information not maintained in the ordinary course of the AFM’s business. AFM further objects to this request as vague and ambiguous. If the Services propose a reasonable limitation on this request, AFM will consider it.

**Document Request No. 15.** All forecasts, studies, projections and analyses of market conditions affecting the operations or financial condition of songwriters, publishers, performing artists, record companies, or digital music services over all or any part of the period 2017-2022.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome, oppressive and not reasonably limited to the issues in this proceeding. AFM further objects to the request as vague and ambiguous.

Without waiver of and subject to AFM’s general and specific objections, AFM has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 16.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the relative roles of songwriters, publishers, performing artists, record companies or digital music services in recorded music products or services with respect to the creative contributions, technological contributions, capital investments, costs, risks, and contributions to the opening of new markets for creative expression and media for their communication.

**RESPONSE:** AFM objects to the request for “all” responsive analyses as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM

objects to the request as vague and ambiguous, and not reasonably related to issues in this proceeding.

AFM further objects to the request as premature. The request appears to seek information ostensibly related to the Section 801(b) factors. The parties have not yet submitted their written direct statements, and whether AFM will submit witness testimony related to the Section 801(b) factors is undetermined at this time. If AFM does submit such testimony, then the Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, AFM does not agree to produce the requested information.

**Document Request No. 17.** All documents that quantify the creative contributions, technological contributions, capital investments, costs, risks, and contributions to the opening of new markets for creative expression and media for their communication by songwriters, publishers, performing artists, record companies or digital music services.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM objects to the request as vague and ambiguous, and not reasonably related to issues in this proceeding.

AFM further objects to this request as premature. The request appears to seek information ostensibly related to the Section 801(b) factors. The parties have not yet submitted their written direct statements, and whether AFM will submit witness testimony related to the Section 801(b) factors is undetermined at this time. If AFM does submit such testimony, then the Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, AFM does not agree to produce the requested information.

**Document Request No. 18.** All documents relating to any disruptive impact on songwriters, publishers, performing artists, record companies or digital music services, or on generally prevailing industry practices, that would result from an increase or decrease in the statutory royalty rate.

**RESPONSE:** AFM objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM objects to the request as vague and ambiguous, and not reasonably related to issues in this proceeding.

AFM further objects to this request as premature. The request appears to seek information ostensibly related to the Section 801(b) factors. The parties have not yet submitted their written direct statements, and whether AFM will submit witness testimony related to the Section 801(b) factors is undetermined at this time. If AFM does submit such testimony, then the Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, AFM does not agree to produce the requested information.

**Document Request No. 19.** All analyses, memoranda, abstracts, notes, working papers, articles (published or unpublished), studies, submissions, briefs, press releases, and/or speeches reflecting, referring to, discussing, or otherwise relating to satellite radio, differences amongst types of Digital Music Services, possible convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Music Services or terrestrial radio, the efforts of record companies to obtain play on satellite radio, benchmarking analysis of any type, cross-elasticity of demand between Digital Music Services and/or satellite or terrestrial radio, and the potential convergence of two music products or music markets into a single relevant market.

**RESPONSE:** AFM objects to the request for “all” responsive analyses as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. AFM objects to the request as vague and ambiguous, and not reasonably related to issues in this proceeding.

AFM further objects to this request as premature. The request seeks information related to broad subject matters and whether AFM will submit witness testimony related to any of the subject matters is undetermined at this time. If AFM does submit such testimony, then the

Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, AFM does not agree to produce the requested information.

**Document Request No. 20.** Concerning the AFM & AFM Intellectual Property Rights Distribution Fund (the “AFM & SAG-AFTRA Fund”), documents sufficient to show, for each year since 2013: (a) amounts paid into the AFM & SAG-AFTRA Fund in each year from all sources, including SoundExchange; (b) the amounts paid into the AFM & SAG-AFTRA Fund by SoundExchange by category of service (SDARS, webcasters, etc.); (c) amounts distributed from the AFM & SAG-AFTRA Fund in total and by category (e.g., session musicians, vocalists, background singers, etc.); (d) amounts not distributed; (e) the number and percentage of fund recipients not found; (f) the number and percent of checks returned; (g) amounts returned to the AFM & SAG-AFTRA Fund because the recipient could not be found within three years; and (h) amounts paid to union musicians/vocalists versus non-union musicians/vocalists.

**RESPONSE:** AFM objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. AFM objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. AFM objects to this Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions.

The AFM & SAG-AFTRA fund does not maintain records for each of the categories identified. Without waiver of and subject to AFM’s general and specific objections, AFM will produce responsive documents that can be located after a reasonable and diligent search. AFM’s response should not be construed as meaning that AFM agrees, admits, or otherwise acknowledges the factual expressions or assumptions contained in the Request.

**Document Request No. 21.** Documents sufficient to show how background musicians and singers are identified for performances by statutory licensees and how they are paid from the AFM & SAG-AFTRA Fund, including the number and percentage of performances for which (a) all background singers and musicians are identified; and (b) no background singers and musicians are identified.

**RESPONSE:** AFM objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. AFM objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. AFM objects to this Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions.

Without waiver of and subject to AFM's general and specific objections, AFM will produce responsive documents that can be located after a reasonable and diligent search. AFM's response should not be construed as meaning that AFM agrees, admits, or otherwise acknowledges the factual expressions or assumptions contained in the Request.

**Document Request No. 22.** Concerning the Special Payments Fund ("SPF"), documents sufficient to show, for each year since 2013: (a) the amounts paid into the SPF in each year from all sources; (b) amounts distributed from the Fund in total and by category (e.g., session musicians, background singers, etc.); (c) amounts not distributed; and (d) amounts paid to union musicians/vocalists versus non-union musicians/vocalists.

**RESPONSE:** AFM objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. AFM objects to this request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. AFM objects to this Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions.

Without waiver of and subject to AFM's general and specific objections, AFM will produce responsive documents that can be located after a reasonable and diligent search. AFM's response should not be construed as meaning that AFM agrees, admits, or otherwise acknowledges the factual expressions or assumptions contained in the Request.

Respectfully submitted,

By /s/ Jared O. Freedman  
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*Counsel for The American Federation of  
Musicians of the United States and Canada*

Dated: July 25, 2016

**CERTIFICATE OF SERVICE**

I, Alex Trepp, do hereby certify that, on the 25<sup>th</sup> day of July, 2016, copies of the foregoing were sent via electronic mail to all parties at the email addresses listed below. Hard copies will follow by first class mail.

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**Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress**

*In re*

Determination of Royalty Rates and Terms  
for Transmission of Sound Recordings by  
Satellite Radio and “Preexisting”  
Subscription Services (SDARS III)

Docket No. 16–CRB–0001–SR/PSSR

(2018–2022)

**SAG-AFTRA’S RESPONSES AND OBJECTIONS TO THE FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS TO THE SCREEN ACTORS GUILD AND  
AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS FROM SIRIUS  
XM, MUSIC CHOICE, AND MUZAK**

The Screen Actors Guild and American Federation of Television and Radio Artists (“SAG-AFTRA”), by its attorneys, hereby responds and objects to the First Set of Requests for Production of Documents to SAG-AFTRA from Sirius XM, Music Choice, and Muzak (the “Requests”).

**GENERAL OBJECTIONS**

1. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon SAG-AFTRA requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, or any other applicable rule or order governing this proceeding, including applicable prior precedent.
2. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, as premature to the extent that they purport to impose a duty on SAG-AFTRA to produce documents. While SAG-AFTRA is willing to make certain voluntary disclosures of information before it submits its written direct case, Congress contemplated that discovery in CRB royalty rate proceedings would commence after submission of the Participants’ written direct statements

and according to a schedule issued after the Copyright Royalty Judges considered the views of Participants in the proceeding. 17 U.S.C. § 803(b)(6)(C)(i), (ii). The CRB regulations likewise contemplate that a discovery schedule will issue after the Participants submit written direct statements and after the Copyright Royalty Judges have conferred with the participants. 37 C.F.R. § 351.5(a). Any documents that SAG-AFTRA agrees to produce prior to the submission of its written direct statement will be produced on a voluntary basis. SAG-AFTRA reserves its rights to challenge the CRB's authority to require discovery prior to the submission of written direct statements.

3. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, as premature because the parties have not yet submitted written direct statements. The Requests therefore seek documents that necessarily are not "directly related" to SAG-AFTRA's written direct statement. *See* 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

4. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

5. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad, and/or unduly burdensome, and to the extent they would require SAG-AFTRA to spend an unreasonable amount of time, effort, and resources in order to respond.

6. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests or call for information that is publicly available and readily accessible. Such Requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

7. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product immunity doctrine. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product immunity doctrine, and any other applicable privilege or doctrine.

8. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent any Request contains factually inaccurate information or statements, is argumentative, is predicated on erroneous assumptions or states legal conclusions. A statement herein that SAG-AFTRA will produce documents responsive to a Request does not indicate and should not be construed as meaning that SAG-AFTRA agrees, admits, or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, or that the documents are relevant and admissible.

9. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they seek to impose obligations on any member of SAG-AFTRA that is not a participant in this proceeding. Its members' documents are not in SAG-AFTRA possession, custody or control.

10. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not in the possession, custody, or control of SAG-AFTRA, including documents from other parties or members of SAG-AFTRA.

11. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they seek documents from other proceedings. Such requests are overbroad, harassing, and

unduly burdensome. SAG-AFTRA further objects to such requests to the extent they violate or are inconsistent with any statute, rule, order, or other authority governing the other proceeding, including applicable protective orders and prior precedent.

12. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they seek “all documents” of a certain nature, as vague, ambiguous, overbroad, and unduly burdensome.

13. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, as overbroad, unduly burdensome, oppressive, and harassing, to the extent they seek the production of draft documents, which may be numerous and irrelevant to resolution of the issues in this proceeding.

14. SAG-AFTRA objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that do not exist or are not maintained in the ordinary course of business. SAG-AFTRA also objects to the Requests, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business.

15. By agreeing to search for and produce documents responsive to any particular Request, SAG-AFTRA does not represent that such documents exist or that they are in the possession, custody or control of SAG-AFTRA, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

16. SAG-AFTRA reserves any and all objections to the use or admissibility in any proceeding of any information, material, documents, or communications identified, produced or disclosed in response to the Requests.

17. SAG-AFTRA objects to the requested date of production as unduly burdensome, and providing insufficient time for SAG-AFTRA to locate responsive documents. SAG-AFTRA will produce documents as set forth below and after conducting a reasonable search.

18. The responses and objections contained herein are made to the best of SAG-AFTRA's present knowledge, belief, and information, and are based on a reasonable, diligent, and ongoing search. SAG-AFTRA reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

#### **OBJECTIONS TO DEFINITIONS**

1. SAG-AFTRA objects to the definition of "Digital Music Service" in Definition No. 1 to the extent it purports to define the relevant universe of services as broadly as possible without limitation to issues that are relevant to this proceeding. To the extent the Requests purport to impose an obligation to produce documents related to the overbroad array of services described in the definition, including documents for services operating outside of the United States, SAG-AFTRA objects to the definition as irrelevant, overbroad, unduly burdensome, oppressive, harassing, and not reasonably limited to the issues in this proceeding.

2. SAG-AFTRA objects to the definition of "Document" and "documents" in Definition No. 2 to the extent it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding, and to the extent it suggests that the Federal Rules of Civil Procedure govern discovery in this proceeding.

3. SAG-AFTRA objects to the definition of "SAG-AFTRA," "you" and "your" in Definition No. 6 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope

of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including board members, committee members and anyone acting on SAG-AFTRA's behalf. SAG-AFTRA objects to the Definition as overbroad, unduly burdensome, oppressive, harassing and beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose an obligation on any member of SAG-AFTRA that is not a participant in this proceeding. SAG-AFTRA also objects to the Definition to the extent it seeks to impose an obligation to produce documents not in SAG-AFTRA's possession, custody or control and objects to the term "affiliated companies" as vague and ambiguous.

4. SAG-AFTRA objects to the definition of "SoundExchange," in Definition No. 8 as overbroad, unduly burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding, to the extent it purports to impose an obligation to collect documents related to an unreasonably wide array of people and entities, including board members, committee members and anyone acting on SoundExchange's behalf. SAG-AFTRA objects to the capitalized but undefined term "SoundExchange Witnesses" as vague and ambiguous; to the extent the term refers to witnesses who may submit written direct testimony on behalf of SoundExchange, SAG-AFTRA objects to the extent that such witnesses have not yet been identified. SAG-AFTRA also objects to the extent the Definition purports to impose an obligation to produce documents not in SAG-AFTRA's possession, custody or control. SAG-AFTRA objects to the term "affiliated companies" as vague and ambiguous. To the extent that term seeks to impose an obligation to produce documents related to the thousands of record companies to whom SoundExchange distributes royalty payments, it is overbroad, unduly

burdensome, oppressive, harassing, and beyond the scope of permissible discovery in this proceeding.

### **OBJECTIONS TO INSTRUCTIONS**

1. SAG-AFTRA objects to the Instructions to the extent they seek to impose obligations that are inconsistent with or not supported by the governing statute or regulations.
2. SAG-AFTRA objects to Instruction No. 1 to the extent it is inconsistent with the requirements imposed by statute, regulations and the Court's "Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order."
3. SAG-AFTRA objects to Instruction No. 2 as overbroad, unduly burdensome, harassing, oppressive, exceedingly vague and beyond the scope of permissible discovery in this proceeding, to the extent that it seeks to impose an obligation to collect documents from an unreasonably wide array of people and entities, including "SAG-AFTRA's attorneys, agents, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with SAG-AFTRA." There are numerous people and entities who might fit this description and the request to produce documents in the possession of any of them is egregiously overbroad.
4. SAG-AFTRA objects to Instruction No. 4's request for a privilege log, which purports to impose upon SAG-AFTRA requirements that exceed 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding. The governing statute and regulations do not provide for the exchange of privilege logs, and providing privilege logs would be extremely burdensome given the limited time for discovery in this proceeding. SAG-AFTRA will not produce a privilege log in connection with its production of documents.
5. SAG-AFTRA objects to Instruction No. 6 to the extent it seeks to impose an obligation to interpret language that is ambiguous.

6. SAG-AFTRA objects to Instruction No. 8 to the extent it seeks documents from time periods the Services themselves have deemed not reasonably related to the matters in this proceeding (i.e., time periods prior to January 1, 2013). Unless otherwise indicated in response to a specific Request, SAG-AFTRA will produce documents for the time period January 1, 2013 through the present.

### **RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

Subject to and without waiving the foregoing objections, SAG-AFTRA sets forth below specific responses and objections to the Requests.

**Document Request No. 1.** All press releases, newsletters, member communications and other general publications distributed by SAG-AFTRA concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information and information that is trivial. SAG-AFTRA objects to the request to the extent it seeks information that may be difficult to locate. SAG-AFTRA objects to the request as vague and ambiguous. SAG-AFTRA objects to the request as overbroad, unduly burdensome, oppressive and harassing, to the extent it calls for information that is publicly available and readily accessible.

SAG-AFTRA further objects to the request for all documents concerning statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services as vastly overbroad, unduly burdensome, oppressive, vague and not reasonably limited to issues in this proceeding. Without waiver of and subject to SAG-AFTRA’s general and specific objections, SAG-AFTRA will

produce responsive documents relating to this rate proceeding that can be located after a reasonable and diligent search.

**Document Request No. 2.** All public statements, remarks, testimony, speeches, including but not limited to Congressional testimony, declarations, affidavits, articles, tweets, or blog postings, made by or given by SAG-AFTRA or any officer, employee, or representative of SAG-AFTRA concerning this rate proceeding, statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information and information that is trivial. SAG-AFTRA objects to the request to the extent it seeks information that may be difficult to locate. SAG-AFTRA objects to the request as vague and ambiguous.

SAG-AFTRA further objects to the request for all documents concerning statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services as vastly overbroad, unduly burdensome, oppressive, vague and not reasonably limited to issues in this proceeding. If the Services propose a reasonable limitation on this request, SAG-AFTRA will consider it.

**Document Request No. 3.** All documents provided to (or prepared in anticipation of providing them to) the Securities and Exchange Commission, Congress, the Copyright Office, the Department of Justice or any other governmental agency concerning this rate proceeding, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies and/or digital music services.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and to the extent such a request will yield cumulative information. SAG-AFTRA objects to the request to the extent it seeks information that may be difficult to locate. SAG-AFTRA objects to the request as vague and ambiguous.

SAG-AFTRA further objects to the request for all documents concerning statutory licenses, the recorded music industry, sound recording royalties, copyright reform and/or legislation, record companies, and/or digital music services as vastly overbroad, unduly burdensome, oppressive, vague and not reasonably limited to issues in this proceeding. If the Services propose a reasonable limitation on this request, SAG-AFTRA will consider it.

**Document Request No. 4.** For any Digital Music Service offering interactive or non-interactive digital music streaming (audio or video), or any other transmission that does not result in the creation of a permanent digital download, or for services in any other category of service that you and/or SoundExchange intend to present as a benchmark in this proceeding, all analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the market characteristics for each service, including without limitation all documents discussing, analyzing, or evidencing:

- a. the consumer demand, price at every level a price is charged, demand or price elasticities, and other characteristics;
- b. consumer usage;
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service on other Digital Music Services, terrestrial radio, sales of physical copies of sound recordings (e.g., CDs), sales of digital downloads, or for any other distribution channels for sound recordings;
- d. whether any Service or digital music services generally promote or otherwise increase the sale, distribution, or other licensed uses of sound recordings; and
- e. comparisons of any Service with satellite radio or any other Digital Music Service.

**RESPONSE:** SAG-AFTRA objects to this request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests information that SAG-AFTRA does not maintain in the ordinary course of its business.

SAG-AFTRA also objects to the request for this information as premature. The parties have not yet submitted their written direct statements or identified the agreements that will form the basis of benchmarks in this proceeding.

Without waiver of and subject to SAG-AFTRA's general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 5.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning:

- a. the promotional value and/or substitutional effect of Sirius XM or any PSS on sales, subscriptions to other Digital Music Services, or other sources of revenue;
- b. any substitution between Digital Music Services (including Sirius XM or any PSS) and sales, subscriptions, and radio;
- c. the existence or nonexistence of a substitutional or promotional effect by any Digital Music Service or terrestrial radio on other sources of revenue.
- d. the relative elasticities of demand across different Digital Music Services at both the licensing and consumer sales/use level;
- e. customer preferences related to lean-back or lean-forward experiences or services;
- f. listening of on-demand service users to non-on-demand service features and modes of listening (e.g., non-interactive listening features, playlists);
- g. any purported shift from music ownership to access; and
- h. listening of subscribers to Sirius XM or any PSS.

**RESPONSE:** SAG-AFTRA objects to the request for "all" responsive documents as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests information that is not maintained in the ordinary course of SAG-AFTRA's business. SAG-AFTRA objects to the request as vague and ambiguous. Without waiver of and subject to SAG-AFTRA's general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 6.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the ability of any Digital Music Service to "steer" plays toward or away from particular Record Companies, or to steer listening more generally.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests information that is not maintained in the ordinary course of SAG-AFTRA’s business. SAG-AFTRA objects to the request for documents concerning record companies because SAG-AFTRA does not represent record companies. SAG-AFTRA objects to the request for documents concerning “the ability of any Digital Music Service . . . to steer listening more generally” as overbroad, unduly burdensome, oppressive and harassing, to the extent it is vague, ambiguous, and not reasonably limited to the issues in this proceeding. Without waiver of and subject to SAG-AFTRA’s general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 7.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the effect of YouTube or any other Interactive Streaming Service offering access to audiovisual recordings (e.g., VEVO, Vimeo) on record companies revenues or business.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive. SAG-AFTRA objects to the request as vague and ambiguous. SAG-AFTRA further objects to the request for documents concerning record companies, because SAG-AFTRA does not represent record companies. Without waiver of and subject to SAG-AFTRA’s general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 8.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the reasons that consumers purchase or do not purchase recorded music products or services, including survey results, reports, studies, analyses, communications and other documents addressing consumers’ preferences, interests or desires regarding such products or services or the pricing thereof.

**RESPONSE:** SAG-AFTRA objects to the request for "all" responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA objects to the request as vague and ambiguous. SAG-AFTRA objects to the request to the extent it requests information not maintained in the ordinary course of SAG-AFTRA's business. Without waiver of and subject to SAG-AFTRA's general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 9.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents related to measuring or attempting to measure the use by consumers of recorded music products or services.

**RESPONSE:** SAG-AFTRA objects to the request for "all" responsive documents as overbroad, unduly burdensome, oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA objects to the request as vague and ambiguous. SAG-AFTRA objects to the request to the extent it requests information not maintained in the ordinary course of SAG-AFTRA's business. Without waiver of and subject to SAG-AFTRA's general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 10.** All forecasts, studies, projections and analyses of wholesale or retail pricing of recorded music products or services, including but not limited to any documents relating to the effect of royalty rates on the pricing of recorded music products or services.

**RESPONSE:** SAG-AFTRA objects to the request for "all" responsive documents as overbroad, unduly burdensome, oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA objects to the request to the extent it requests information not maintained in the ordinary course of SAG-AFTRA's business. Without waiver of and subject to SAG-AFTRA's

general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 11.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the extent to which the pricing of any recorded music product or service is constrained, or will in the future be constrained, by the pricing of any other recorded music product or service, or by piracy.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA further objects to the request as vague and ambiguous. SAG-AFTRA objects to the request to the extent it requests information not maintained in the ordinary course of SAG-AFTRA’s business. Without waiver of and subject to SAG-AFTRA’s general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 12.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents comparing, evaluating, or differentiating any Digital Music Services.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA further objects to the request as vague and ambiguous. SAG-AFTRA objects to the request to the extent it requests information not maintained in the ordinary course of SAG-AFTRA’s business. Without waiver of and subject to SAG-AFTRA’s general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

**Document Request No. 13.** All documents relating to the digital music strategy of SAG-AFTRA, including all documents concerning the development, goals, and implementation of this strategy, and the effects of this strategy on licensing or withholding of licenses, royalty rates, costs and revenues.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA objects to the request for all documents related to “digital music strategy,” its implementation, and its effects as vastly overbroad, ambiguous, vague, and not reasonably limited to issues in this proceeding. SAG-AFTRA objects to the request as overbroad, unduly burdensome, oppressive and harassing, to the extent it requests information not maintained or centrally kept in the ordinary course of SAG-AFTRA’s business.

SAG-AFTRA objects to this Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions. SAG-AFTRA objects to the request to the extent it seeks information that is privileged or otherwise protected from disclosure. SAG-AFTRA further objects to the request for this information as premature, as the parties have not yet submitted their written direct statements. Documents concerning the subject matter of this request may be relevant once the parties have submitted their written direct statements. If SAG-AFTRA does submit such testimony, then the Services can seek documents “directly related” to that testimony, to the extent SAG-AFTRA has any such documents, after the testimony has been submitted. Until that time, SAG-AFTRA does not agree to produce documents responsive to this request, if it has any.

**Document Request No. 14.** All forecasts, studies, projections and analyses of sales of recorded music products or services of any kind or subscriptions to digital music services over all or any part of the period 2017-2022.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA objects to the request to the extent it requests information not maintained in the ordinary course of SAG-AFTRA’s business. SAG-AFTRA further objects to the request as

vague and ambiguous. If the Services propose a reasonable limitation on this request, SAG-AFTRA will consider it.

**Document Request No. 15.** All forecasts, studies, projections and analyses of market conditions affecting the operations or financial condition of songwriters, publishers, performing artists, record companies, or digital music services over all or any part of the period 2017-2022

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome, oppressive, and not reasonably limited to the issues in this proceeding.

SAG-AFTRA objects to the request for documents concerning “performing artists” as overbroad, vague, ambiguous and not reasonably limited to the issues in this proceeding. If the Services propose a reasonable limitation on this request, SAG-AFTRA will consider it.

**Document Request No. 16.** All analyses, memoranda, presentation decks, studies, surveys, research findings, or other similar documents concerning the relative roles of songwriters, publishers, performing artists, record companies or digital music services in recorded music products or services with respect to the creative contributions, technological contributions, capital investments, costs, risks, and contributions to the opening of new markets for creative expression and media for their communication.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive analyses as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding.

SAG-AFTRA objects to the request as vague and ambiguous, and not reasonably related to issues in this proceeding.

SAG-AFTRA further objects to the request as premature. The request appears to seek information ostensibly related to the Section 801(b) factors. The parties have not yet submitted their written direct statements, and whether SAG-AFTRA will submit witness testimony related to the Section 801(b) factors is undetermined at this time. If SAG-AFTRA does submit such testimony, then the Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, SAG-AFTRA does not agree to produce the requested information.

**Document Request No. 17.** All documents that quantify the creative contributions, technological contributions, capital investments, costs, risks, and contributions to the opening of new markets for creative expression and media for their communication by songwriters, publishers, performing artists, record companies or digital music services.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding.

SAG-AFTRA objects to the request for documents concerning “performing artists” as overbroad, vague, ambiguous, and not reasonably related to issues in this proceeding.

SAG-AFTRA further objects to this request as premature. The request appears to seek information ostensibly related to the Section 801(b) factors. The parties have not yet submitted their written direct statements, and whether SAG-AFTRA will submit witness testimony related to the Section 801(b) factors is undetermined at this time. If SAG-AFTRA does submit such testimony, then the Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, SAG-AFTRA does not agree to produce the requested information.

**Document Request No. 18.** All documents relating to any disruptive impact on songwriters, publishers, performing artists, record companies or digital music services, or on generally prevailing industry practices, that would result from an increase or decrease in the statutory royalty rate.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive documents as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding.

SAG-AFTRA objects to the request as vague and ambiguous, and not reasonably related to issues in this proceeding.

SAG-AFTRA further objects to this request as premature. The request appears to seek information ostensibly related to the Section 801(b) factors. The parties have not yet submitted their written direct statements, and whether SAG-AFTRA will submit witness testimony related

to the Section 801(b) factors is undetermined at this time. If SAG-AFTRA does submit such testimony, then the Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, SAG-AFTRA does not agree to produce the requested information.

**Document Request No. 19.** All analyses, memoranda, abstracts, notes, working papers, articles (published or unpublished), studies, submissions, briefs, press releases, and/or speeches reflecting, referring to, discussing, or otherwise relating to satellite radio, differences amongst types of Digital Music Services, possible convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Music Services or terrestrial radio, the efforts of record companies to obtain play on satellite radio, benchmarking analysis of any type, cross-elasticity of demand between Digital Music Services and/or satellite or terrestrial radio, and the potential convergence of two music products or music markets into a single relevant market.

**RESPONSE:** SAG-AFTRA objects to the request for “all” responsive analyses as overbroad, unduly burdensome and oppressive, and not reasonably limited to the issues in this proceeding. SAG-AFTRA objects to the request as vague and ambiguous, and not reasonably related to issues in this proceeding.

SAG-AFTRA further objects to this request as premature. The request seeks information related to broad subject matters and whether SAG-AFTRA will submit witness testimony related to any of the subject matters is undetermined at this time. If SAG-AFTRA does submit such testimony, then the Services can seek documents “directly related” to that testimony after the testimony has been submitted. Until that time, SAG-AFTRA does not agree to produce the requested information.

**Document Request No. 20.** Concerning the AFM & SAG-AFTRA Intellectual Property Rights Distribution Fund (the “AFM & SAG-AFTRA Fund”), documents sufficient to show, for each year since 2013: (a) amounts paid into the AFM & SAG-AFTRA Fund in each year from all sources, including SoundExchange; (b) the amounts paid into the AFM & SAG-AFTRA Fund by SoundExchange by category of service (SDARS, webcasters, etc.); (c) amounts distributed from the AFM & SAG-AFTRA Fund in total and by category (e.g., session musicians, vocalists, background singers, etc.); (d) amounts not distributed; (e) the number and percentage of fund recipients not found; (f) the number and percent of checks returned; (g) amounts returned to the

AFM & SAG-AFTRA Fund because the recipient could not be found within three years; and (h) amounts paid to union musicians/vocalists versus non-union musicians/vocalists.

**RESPONSE:** SAG-AFTRA objects to the request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. SAG-AFTRA objects to the request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. SAG-AFTRA objects to the Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions.

The AFM & SAG-AFTRA fund does not maintain records for each of the categories identified. Without waiver of and subject to SAG-AFTRA's general and specific objections, SAG-AFTRA will produce responsive documents that can be located after a reasonable and diligent search. SAG-AFTRA's response should not be construed as meaning that SAG-AFTRA agrees, admits, or otherwise acknowledges the factual expressions or assumptions contained in the Request.

**Document Request No. 21.** Documents sufficient to show how background musicians and singers are identified for performances by statutory licensees and how they are paid from the AFM & SAG-AFTRA Fund, including the number and percentage of performances for which (a) all background singers and musicians are identified; and (b) no background singers and musicians are identified.

**RESPONSE:** SAG-AFTRA objects to the request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. SAG-AFTRA objects to the request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different

from the manner in which they are maintained in the ordinary course of business. SAG-AFTRA objects to the Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions.

Without waiver of and subject to SAG-AFTRA's general and specific objections, SAG-AFTRA will produce responsive documents that can be located after a reasonable and diligent search. SAG-AFTRA's response should not be construed as meaning that SAG-AFTRA agrees, admits, or otherwise acknowledges the factual expressions or assumptions contained in the Request.

**Document Request No. 22.** Concerning the Special Payments Fund ("SPF"), documents sufficient to show, for each year since 2013: (a) the amounts paid into the SPF in each year from all sources; (b) amounts distributed from the Fund in total and by category (e.g., session musicians, background singers, etc.); (c) amounts not distributed; and (d) amounts paid to union musicians/vocalists versus non-union musicians/vocalists.

**RESPONSE:** SAG-AFTRA objects to the request as overbroad, unduly burdensome, oppressive, and harassing, to the extent it requests a large volume of very detailed information that may not be maintained in the ordinary course of business or that may be extremely burdensome to collect, review and produce. SAG-AFTRA objects to the request to the extent it seeks to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business. SAG-AFTRA objects to the Request to the extent it contains factually inaccurate information or statements, is argumentative, and/or is predicated on erroneous assumptions.

Without waiver of and subject to SAG-AFTRA's general and specific objections, SAG-AFTRA has conducted a reasonable and diligent search and determined it does not possess any documents responsive to this request.

Respectfully submitted,

By /s/ Jared O. Freedman  
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Dated: July 25, 2016

**CERTIFICATE OF SERVICE**

I, Alex Trepp, do hereby certify that, on the 25<sup>th</sup> day of July, 2016, copies of the foregoing were sent via electronic mail to all parties at the email addresses listed below. Hard copies will follow by first class mail.

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Dated: July 25, 2016

/s/ Alex Trepp  
Alex Trepp